AMERICAN LAW

OF

Charter Parties

AND

Ocean Bills of Lading

BY

WHARTON POOR
OF THE NEW YORK BAR

ALBANY, N. Y.
MATTHEW BENDER & COMPANY
INCORPORATED
1920

To

MR. CHARLES S. HAIGHT,

with whom it has been my privilege to discuss many of the questions here presented.

INTRODUCTION.

In preparing the pages which follow, I have endeavored to produce a book which would be of use to business men as well as to lawyers. The scheme which I have adopted is to discuss clause by clause the well known documents in everyday use by shipping men,—time charters, rate charters, ocean bills of lading, including that most important statute, the Harter Act. In view of the excellent English works on the subject, I have not attempted to refer to all of the English decisions, but have done so wherever I have deemed it necessary further to illustrate a point or in the absence of American authority.

I have stated the result of the decisions,—not my own conclusions. I must not be taken as agreeing with every decision to which I have referred.

WHARTON POOR.

New York City, February, 1920.

TABLE OF CONTENTS

[References are to Sections.]

CHAPTER I.

TIME CHARTERS.

	SECTION
Statements relating to the ship	1
Time and voyage	2
Seaworthiness	3
Lawful cargo	4
Safe ports	5
Expenses falling on owner: Insurance	6
Expenses falling on charterer	7
Withdrawal	8
Spaces at charterer's disposal	9
Signing bills of lading	10
Indemnification by charterer	11
Ventilation of the cargo	12
Breakdown clause	13
Exception clause	14
Arbitration clause	15
Lien clause	16
Dry docking	17
Damage to vessel	18
Winches and winchmen	19
Subcharters	20

CHAPTER II.

VOYAGE CHARTERS.

Statements as to vessel's position and time of sailing	21
Cancelling date	22
When no cancelling date	23
Safe ports: So near as she may safely get	24

[References are to Sections.]

SECTION

Effect of bill of lading when ship under charter..... 25
Incorporation of charter party in bill of lading..... 26
Cesser clause. 27
Freight: When earned. 28
Advance freight. 29
Freight pro rata. 30
Lump sum freight. 31
Dead freight. 32
Penalty clause. 33
Commissions. 34

CHAPTER III.

DEMURRAGE.

When is a ship an arrived ship?..... 35
Or so near thereunto as she may safely get..... 36
Provisions expressly fixing time when lay-days are to begin 37
Notice of readiness. 38
Lay-days. 39
Running days, working days, holidays..... 40
Effect of working on excepted days..... 41
Fault of the master or owner..... 42
Stevedores. 43
Exception clauses. 44
Whether the exception clause protects the charterer..... 45
Must the actual loading or discharging be prevented?..... 46
Efforts to be made by charterer to overcome operation of an excepted clause. 47
Specific exceptions. 48
Effect of expiration of lay-days..... 49
Default. 50
Effect of charter without fixed time..... 51
Customary dispatch. 52

[References are to Sections.]

SECTION

Quick despatch, as fast as steamer can deliver, as fast as possible. . . . 53
Continuously. . . . 54
Turn berth clauses. . . . 55
Obligation on charterer to have his cargo ready. . . . 56
Dispatch money. . . . 57
Demurrage through exercise of lien. . . . 58

CHAPTER IV.

BILLS OF LADING.

The bill of lading. . . . 59
The bill of lading as a receipt. . . . 60
Commencement and termination of carrier's liability. . . . 61

The Harter Act.

General effect. . . . 62
When applicable. . . . 63
What the Harter Act forbids. . . . 64
Seaworthiness. . . . 65
What constitutes unseaworthiness. . . . 66
Management and navigation. . . . 67
Care of the cargo. . . . 68
Liberties in the bill of lading. . . . 69
Perils of the sea. . . . 70
Fire and limitation of liability statutes. . . . 71
Restraint of princes. . . . 72
Heat, breakage, rust, leakage, sweat, vermin. . . . 73
Robbery, theft, pilferage. . . . 74
Insurance clauses. . . . 75
Valuation clauses. . . . 76
Notice of claim. . . . 77
General average. . . . 78
Dangerous cargo. . . . 79
Liens. . . . 80
Deck cargo. . . . 81

[References are to Sections.]

CHAPTER V.

DAMAGES.

SECTION

In general. 82
Loss or damage to goods. 83
Delay. 84
Breach of charter. 85

APPENDICES.

A—The Harter Act, U. S. Comp. Stats. 1916, secs. 8029 to 8035.

B—Federal Bills of Lading Act, U. S. Comp. Stats. 1916, secs. 8604aaa to 8604w.

C—Time charter.

D—Rate charter (grain).

E—Rate charter (coal).

F—Rate charter (sailing vessel).

G—Bill of lading.

American Law of

CHARTER PARTIES

and

OCEAN BILLS OF LADING

CHAPTER I.

TIME CHARTERS.

Section 1. Statements relating to the ship.

2. Time and voyage.

3. Seaworthiness.

4. Lawful cargo.

5. Safe ports.

6. The owner shall pay for all provisions, wages, and consular shipping and discharging fees of the captain, officers, engineers, firemen and crew; shall pay for the insurance on the vessel, also for all the cabin, deck, engine room, and other necessary stores.

7. The charterer shall pay for all coals, fuel, port charges, pilotages, agencies, commissions, consular charges (except those pertaining to the captain, officers or crew), and all other charges whatsoever except those before stated.

8. Withdrawal.

9. Spaces at charterer's disposal.

10. Signing bills of lading. The captain shall be under the orders and direction of the charterers as regards agency, or other arrangements.

11. And the charterers hereby agree to indemnify the owners from all consequences or liabilities that may arise from the captain signing bills of lading or otherwise complying with the same.

12. That the master shall use all diligence in caring for the ventilation of the cargo.

13. Breakdown clause (sometimes referred to as "cesser of hire clause").

Statements relating to the ship.

Section 14. Exception clause.
15. Arbitration clause.
16. Lien clause.
17. Steamer is to be docked, bottom cleaned and painted whenever charterers and master think necessary, but at least once in every six months, and payment of hire to be suspended until she is again in proper state for the service.
18. Damage to vessel. "That the owners are to provide ropes, falls, slings and blocks, necessary to handle ordinary cargo up to three tons (of 2240 pounds each) in weight, also lanterns for night work."
19. Steamer to work night and day if required by charterers, and all steam winches to be at the charterers' disposal during loading and discharging, and steamer to provide men to work same both day and night as required. Charterers agree to pay for all night work at the current local rate.
20. Charterers to have liberty of subletting the steamer if required by them.

§ 1. Statements relating to the ship.

A time charter usually commences with certain statements as to the vessel chartered. These statements may be as to any or all of the following particulars: gross and/or net register, deadweight capacity, cubic, speed, class.

The registered tonnage of a vessel is determined by the interior cubical contents, each ton representing 100 cubic feet. Net tonnage is found by deducting certain spaces, such as the crew space, from the

gross tonnage. As registered tonnage does not indicate carrying capacity, a misstatement of the vessel's registered tonnage does not give the right to reject the vessel[1] unless in case of a large discrepancy.

Deadweight and cubic capacity, speed and class belong in a different category. All of these are of great importance to the charterer, and the statement in the charter must be strictly born out by the facts or the charterer may cancel the charter. It would seem that he could also accept the vessel and hold the owner for any damages sustained by the misdescription.[2] In other words, these statements amount to both conditions precedent and warranties; the charterer may either reject or else accept the vessel and obtain the benefit of his contract by a suit for damages.

If it is stated in the charter that the vessel's deadweight or cubic or speed is "guaranteed," this, of

1. Watts v. Camors, 115 U. S. 353, 29 L. Ed. 406; Ashburner v. Balchen, 7 N. Y. 262.

2. The question has not directly come up. However, in cases where the vessel's position is inaccurately stated, the charterer may either cancel, or take the vessel and claim damages. Bentsen v. Taylor, L. R. (1893), 2 Q. B. 274; Engman v. Palgrave, 4 Com. Cas. 75. See Frazer v. Telegraph Co., L. R. 7, Q. B. 566. Statements as to the vessel's position are treated in section 21. For cases in sales of ships, see Bull v. Bath Iron Works, 75 App. Div. 380; Oregon Imp. Co. v. Roach, 117 N. Y. 527.

course, strengthens the view that there is both a condition precedent and a warranty; the parties evidently regarded the statement as of very great importance. On the other hand, where the statements are "not guaranteed" the owner could not be held in the absence of bad faith.[3]

A statement as to the vessel's deadweight capacity does not mean that she will be able to carry that number of tons of any particular cargo. This is true although the parties may have a particular cargo in contemplation.[4]

Where the parties have contemplated that fruit cargoes would be carried, and there is a breach of the speed guaranteed in the charter, the damage to the fruit is recoverable.[5] A guaranty of speed is a continuing one.[5]

Questions as to the statement of a vessel's class have arisen only under voyage charters. It is there held that the warranty is not a continuing one but is satisfied if the vessel is of the class stated at the

3. The Hurstdale, 169 Fed. 912, affd. 179 Fed. 371; Ansgar v. Brauer, 121 Fed. 426; Clydesdale v. Brauer, 120 Fed. 854.

4. The Empire, 69 Fed. 101, C. C. A.; Millar v. The Freden, 22 Com. Cas. 297, affd. 23 Com. Cas. 311. See Mackill v. Wright, L. R. 14 A. C. 106.

5. The Ceres, 72 Fed. 936; The Astraea, 124 Fed. 83. As to recovery of damages for loss of speed, see The Falls of Keltie, 108 Fed. 416; Clydesdale S. S. Co. v. Brauer, 120 Fed. 854.

time the charter is made.[6] Under the ordinary form of time charter, however, the owner would probably be under an obligation to restore the vessel to her class if she lost it through some accident.

Sometimes these statements instead of being made in the charter are made orally, prior to or at the time the charter is signed. In the United States, the parol evidence rule prevents the charterer basing an action against the owner upon such statements.[7] He may, however, apparently refuse to perform the charter if he was induced to make it, by a material misstatement on the part of the owner, such as would have allowed him to cancel if it had been inserted in the charter.[8] This does not vary the contract, but merely allows the charterer to escape from it on the ground that he was induced to enter it by a misstatement induced by the owner. In England, however, the charterer can hold the owner in case of a mistaken oral statement as to the vessel's carrying capacity as for a breach of a collateral oral warranty.[9]

6. Routh v. MacMillan, 2 H. & C. 750; French v. Newgass, L. R. 3, C. P. D. 163.

7. Matthias v. Beeche, 111 Fed. 940; Renard v. Sampson, 12 N. Y. 561.

8. Funch v. Abenheim, 20 Hun, 1.

9. Hassan v. Runciman, 10 Com. Cas. 19. See Harrison v. Knowles, 22 Com. Cas. 293.

§ 2. Time and voyage.

It is next usually stated in a time charter that the charterer agrees to let and the owner to hire the steamship for a period of (say) six months from the time of delivery. With this clause should be read another clause inserted farther down in the charter which reads: "Hire to continue (unless lost) until the time of her redelivery at (insert port of redelivery)." Often the flat period is varied by the use of the word "about."

This is one of the most important clauses in a time charter and gives rise to much disagreement. It is settled that whether the word "about" is used or not, the vessel need not be redelivered on the precise day on which the charter by its terms expires. In order to explain the construction it will be necessary to consider the cases, taking up first those in which the word "about" is not found.

In Straits of Dover S. S. Co. v. Munson,[1] the court had before it a charter of a steamer for a period of 3 months from time of delivery with the usual clause. The vessel was delivered in New York and redelivery was to be at a port north of Hatteras. The vessel proceeded to Mexico but was greatly delayed in discharging by wash-outs and other accidents for which the charterer was not responsible. The result was that the flat period (i. e., the 3

1. 95 Fed. 690, affd. 100 Fed. 1005.

months' period) had expired before the vessel had completed loading her return cargo. Nevertheless, under the charterer's orders the loading was completed with the result that the steamer's redelivery was 2 months 23 days after the expiration of the flat period.

Rates having risen since the charter was made, the owners claimed to recover the difference between the market rate and charter rate from the charterers. It was held, however, that this could not be done; that, because of the contingencies of navigation, the parties must have understood that redelivery on a day certain was impracticable and that when the voyage on which the vessel was sent by the charterer was reasonable there was no breach of charter though the vessel was redelivered beyond the flat period.

The court went a step further in Anderson v. Munson.[2] In that case a vessel under time charter was discharged in Philadelphia 13 days before the expiration of her flat period. She was to be redelivered at a port north of Hatteras. The charterers wished to send her to Mexico and the owners refused to go. It was held that the charterers were not entitled to send the ship to Mexico but could send her to Cuba, the shortest voyage contemplated under

2. 104 Fed. 913. See also, Ropner v. Inter-American S. S. Co., 243 Fed. 549, C. C. A.

the charter. In other words, the court allowed the charterers to send her on a voyage although an overlap was certain.

Recently the provisions for a fixed time of hiring have been qualified by the insertion of the word "about" as for "about 6 months." There is some question as to whether this makes any difference. It has been suggested that unless the word "about" is present the charterer may overlap, but cannot underlap,[3] but this seems inconsistent with some of the language in Straits of Dover v. Munson,[3a] and the question was left open by the Circuit Court of Appeals in The Rygja.[4]

At any rate for an "about" charter the rule seems to be settled that the charterer must either overlap or underlap, whichever will bring the period of redelivery nearest the flat period.[5]

In Trechman v. Munson,[6] freights were down and the charterer redelivered 29 days before the expiration of the flat period. It was held that this was improper because a voyage to Cuba and back could have been made in 43 days and that the charterer

3. The Rygja, 149 Fed. 896, rev. 161 Fed. 106; Reindeer S. S. Co. v. Forslind, 13 Com. Cas. 214.

3a. 95 Fed. 690, affd. 100 Fed. 1005.

4. 161 Fed. 106.

5. The Rygja, 161 Fed. 106, C. C. A.; Trechman v. Munson, 203 Fed. 692, C. C. A.; Meyer v. Sanderson, 32 T. L. R. 428.

6. 203 Fed. 692, C. C. A.

must pay hire up to the end of the flat period—deducting, of course, the rates earned by the owner.

In Munson v. Elswick S. S. Co.,[7] the charter was for a period of about 6 months. Delivery was made in England and redelivery was to be made in the U. K. or Continent. The vessel proceeded outward to Havana, then to New Orleans and thence to the Plate. During the voyage she was greatly delayed by stranding and bad weather which made repairs necessary—also because of encountering the Christmas holidays while loading at New Orleans. As a consequence her flat period expired while she was being unloaded at the Plate and when she was free of cargo she was withdrawn by her owners. It was shown that this was exactly the series of voyages contemplated by the charterers, that the voyages up to the time of her arrival at the Plate were losing voyages and that the charterers had relied on the homeward voyage (from the Plate to the U. K.) to make a profit out of the charter. Nevertheless, it was held that the owners could withdraw as the flat period had expired, although the vessel was not in a port of redelivery—the right to have the vessel redelivered within certain limits was a privilege of the owners which they could waive.

Several English cases[8] are cited in the opinion of

7. 207 Fed. 984, affd. 214 Fed. 84.

8. See Bucknall v. Murray, 5 Com. Cas. 312.

the lower court in this case. These cases are said to be "consistent with the American authorities and with each other."[9]

A variation of the "about" form was passed upon in a recent English case.[10] In that case the "about" period was reduced to a fixed period, by providing for a charter until 15/31 October and the "hire to continue" clause was also limited until between the 15th and 31st of October. The ship was in a port of redelivery on the 18th of October and was sent on a voyage which resulted in her not being redelivered until Nov. 20. It was held that the charterer was guilty of a breach of charter and that the charterer must pay at the market rate after October 31st.

When the charter provided for 3 weeks more or less, it was held that this was at the charterer's option.[11]

Sometimes a time charter party is entered into for a voyage as "for a round trip to South America not south of the River Plate." Under such a clause it was held that whether, when a vessel was delivered at New York, it could first be sent to Halifax, must be determined by expert testimony; and, on such

9. The Rygja, supra.

10. Watson S. S. Co. v. Merryweather, 12 Asp. M. C. 353; see also, Prebensens v. Munson, 258 Fed. 227, C. C. A.

11. Tweedie Trading Co. v. The Sangstad, 180 Fed. 691, C. C. A.

testimony being taken, the charterer's claim was disallowed.[12]

Sometimes the voyage and time form is combined as "one round trip to the West Indies of about six weeks." Under such a charter it was held that the provision as to time controlled.[13]

§ 3. Seaworthiness.

A time charter commonly describes the ship as being tight, staunch and strong and fitted for the voyage. The test of seaworthiness is the same as with regard to other charters—namely, the ship must be reasonably fit for the service.[1] There is also an implied warranty that the vessel is seaworthy at the commencement of each voyage undertaken under the charter.[2]

The seaworthiness of the ship is under the absolute control of the master. Neither he nor his owners are excused because the charterers load the ship in such a way as to make her unseaworthy.[3]

12. Glasgow S. S. Co. v. Tweedie, 143 Fed. 184, 154 Fed. 84.

13. The Helios, 115 Fed. 705, C. C. A. This was, however, a rather unusual case, the ship being used for wrecking services.

1. Phila., etc. S. S. Co. v. McCaldin, 198 Fed. 328, affd. 202 Fed. 735.

2. The Julia Luckenbach, 235 Fed. 388, C. C. A., affd. 248 U. S. 139, 63 L. Ed. 170.

3. Olsen v. U. S. Shipping Co., 213 Fed. 18 C. C. A. See Brit. & For. Mar. Ins. Co. v. Kilgour, 184 Fed. 174, where the mas-

The owner also often agrees to maintain his ship in a thoroughly efficient state in hull and machinery during the service. For the breach of this obligation, for instance, for failing to keep the winches in repair so that the handling of cargo is delayed, the charterer may have damages.[4] When the charter contemplates the carriage of bananas, and there is a custom to cut the bananas before the vessel arrives at her loading port, the owner will be liable for damage to a cargo so cut, owing to the vessel's failure to arrive on time because of unseaworthiness.[5]

§ 4. Lawful cargo.

The clause providing for the carriage of "lawful cargo" only, does not prevent the loading of contraband,[1] nor asphalt in bulk,[2] nor iron ore.[3] The ship can be used as a newspaper despatch boat in time of

ter failed to take enough coal which was held a breach of the owner's duty. In The Centurion, 57 Fed. 412, where, over the master's protest, cargoes were so stowed as to injure each other, the liability fell upon the charterers.

4. Munson v. Miramar, 166 Fed. 722, C. C. A.

5. The George Dumois, 115 Fed. 65, C. C. A. See The Ask, 156 Fed. 678; The Banes, 221 Fed. 416, C. C. A.

1. Atl. Fruit. v. Solari, 238 Fed. 217.

2. Dene v. Tweedie, 133 Fed. 589, 143 Fed. 854.

3. Worrall v. Davis Coal Co., 113 Fed. 549, affd. 122 Fed. 436.

war,[4] and it can be sent in ballast, the expense of procuring extra ballast, if any is needed, falling upon the owner.[5]

§ 5. Safe ports.

A safe port is a port where the conditions are such as not to menace the ship's physical safety, nor to expose her to forfeiture or penalty. Under rate charters difficult questions arise as to who must pay for lighters, when lay-days begin, etc., when a vessel is ordered to a port with a bar across the mouth which cannot be passed when a full cargo is loaded. These questions, however, do not arise under time charters.

Instances of ports being found physically unsafe appear in The Antonio Zambrana[1] where Barracouta, which is up the Magdalena River, was held unsafe because of the dangers of river navigation and The Gazelle[2] where a port was held unsafe when a vessel had to unload outside a dangerous bar. In Johnston v. Saxon Queen S. S. Co.,[3] it was held that the port must be reasonably safe in bad weather as well as in good and accordingly, that a port on the east coast of England, entirely exposed, was unsafe.

4. The Ely, 110 Fed. 563, affd. 122 Fed. 447.
5. Weir v. Union S. S. Co., L. R. (1900), A. C. 525.
1. 70 Fed. 320.
2. 11 Fed. 429, affd. 128 U. S. 474, 32 L. Ed. 496.
3. 12 Asp. M. C. 305.

If the port is in contemplation of the parties at the time the charter is made, the master must be prepared to face such dangers as are known to exist there.[4]

The following cases illustrate the political side of the question. A port where a ship will be forfeited is unsafe.[5] Amsterdam was held safe for an English ship in 1914[6] and Newcastle was held safe for a British ship in 1915 even though she was likely to be sunk on the way by submarines.[7]

With regard to physical safety, much was left in a recent case to the master's discretion. The court intimated that if the master honestly considered the port unsafe, his judgment would not be reversed.[8] But the master's judgment has been set aside.[9]

In case the vessel goes to an unsafe port and is damaged, the owner will desire to recover his damages from the charterer. If, however, he has accepted a port as safe with full knowledge of its dangers, this cannot be done.[10] On the other hand, if the claim is not thus barred, damages are recover-

4. The Helios, 115 Fed. 705, C. C. A.
5. Ogden v. Graham, 1 B. & S. 773.
6. East Asiatic S. S. Co. v. Tronto, 31 T. L. R. 543.
7. Palace Spg. Co. v. Gans Line, 21 Com. Cas. 270.
8. Tweedie Tra. Co. v. Clan Line, 207 Fed. 70, C. C. A.
9. Christopherson v. Donald, 175 Fed. 1002,affd. 187 Fed. 975.
10. Atkins v. Fibre Co., 2 Ben. 381, F. C. 601, affd. 18 Wall. 272.

able.[11] Where the charterer ordered the steamer to an unsafe anchorage, and the master, although realizing the danger, failed to move away, half damages were allowed.[12]

§ 6. The owner shall pay for all provisions, wages, and consular shipping and discharging fees of the captain, officers, engineers, firemen and crew; shall pay for the insurance on the vessel, also for all the cabin, deck, engine-room, and other necessary stores. (See section seven.)

Insurance clause. This insurance is not to be regarded as taken by the owner for the benefit of the charterer. It protects the owner only.[1] In The Barnstable,[2] a steamer, while operating under a demise charter, adapted from the time charter form, ran down a sailing vessel. The owners of the steamer had taken out insurance containing a "running down clause," and settled the collision liability. It was held that the underwriters could sue in the name of the owners, and hold the charterers liable for the sum they had been forced to pay because of

11. Crisp v. U. S. & Aust S. S. Co., 124 Fed. 748.

12. Constantine v. West India S. S. Co., 199 Fed. 964. See The Northman, 189 Fed. 33, C. C. A.; The Crown of Galicia, 232 Fed. 305, C. C. A.

1. Aira Force S. S. Co. v. Christie, 9 Times, L. R. 104.

2. 181 U. S. 464.

the collision. The clause providing that the owners should pay for the insurance was held to show merely an adjustment of various expenses between owners and charterers and not as meaning that the owners should take out insurance for the charterer's benefit.

§ 7. The charterer shall pay for all coals, fuel, port charges, pilotages, agencies, commissions, consular charges (except those pertaining to the captain, officers or crew), and all other charges whatsoever except those before stated.

The general scheme of a time charter is that the owner turns over a fully equipped ship to the charterer and operates the ship for the charterer's benefit, being compensated by the monthly hire. The owner pays the ordinary running expenses of the vessel, and the charterer such of the expenses as are specially incident to the trade in which he employs her. Thus the owner pays the crew's wages and supplies their food and also pays for the engine-room stores, keeps the vessel repaired and pays for the insurance. Almost everything else falls upon the charterer. He pays for the coal, for towing the ship, for the pilot, for the port dues and for loading and discharging. The charterer's obligation to pay for "all coals" includes the obligation to pay for

such of the coal as is used in the galley by the crew to cook their food.[1]

A time charter is not a demise of the vessel.[2] The duty of navigation rests entirely upon the owner. For instance, even when a pilot is in the general employ of the charterer, nevertheless it is the owner and not the charterer who is liable for his negligence in navigating.[3] So the charterer is not liable for the negligence of the tugs which he has employed to dock the vessel.[4] And the general duty of loading and discharging is regarded as resting upon the owner.[5] The rule is so absolute that the owner and

1. Dampsk Ella. v. Inter-Amer. S. S. Co., 205 Fed. 734, C. C. A. In The Endsleigh, 124 Fed. 858, it was held that the owners were not liable for the value of coal stolen by the engineer, but this decision was made before the nature of a time charter was fully determined. See The Burma, 187 Fed. 94, C. C. A., where it was held that the charterers were not liable for damage to the ship resulting from the negligent use of a gaseous coal by the crew. In British & For. Mar. Ins. Co. v. Kilgour, 184 Fed. 174, it was held that where a time chartered vessel was unseaworthy because of failure to take enough coal, the ultimate responsibility fell upon the owner.

2. Weir v. Union S. S. Co., L. R. (1900), A. C. 525; Clyde Commercial v. West India S. S. Co., 169 Fed. 275, C. C. A.; Munson v. Glasgow Nav. Co., 235 Fed. 64, C. C. A.

3. The Volund, 181 Fed. 643, C. C. A.; The Leader, 166 Fed. 139 (pilot is owner's servant). See The Hathor, 167 Fed. 194 (a compulsory pilot not the agent of either party). Crisp v. U. S. & A. S. S. Co., 124 Fed. 748, same point.

4. Luckenbach v. Insular Line, 186 Fed. 327, C. C. A.

5. Munson v. Glasgow Nav. Co., 235 Fed. 64, C. C. A., Sed quaere.

not the charterer is liable to pay a fine and the costs of legal proceedings incurred by reason of the vessel's entering a Cuban port without a bill of health. Although the expense of procuring the bill of health would fall upon the charterer, the duty of procuring it is one of navigation.[6]

Those affected with actual or constructive notice that these charges are to be met by the charterer cannot furnish supplies to the ship and then claim a lien upon her; they are considered as having contracted upon the personal credit of the charterer.[7]

§ 8. Withdrawal.

"Payment of the said hire to be made in advance and in default of such payment the owners shall have the faculty of withdrawing the said steamer from the service of the charterers." The "withdrawal" here referred to is not equivalent to cancellation. In order to put an end to the charter for non-payment of hire, the charterer must be deprived of the use of the ship. As stated in a recent decision:[1]

6. Dunlop S. S. Co. v. Tweedie, 178 Fed. 673, C. C. A.

7. The Kate, 164 U. S. 458; The Solveig, 103 Fed. 322, C. C. A.

1. Luckenbach v. Pierson, 229 Fed. 130, 132 C. C. A. The English courts consider "withdrawal" as being the equivalent of cancellation; Italian State Railways v. Mavrogordatos, 1919, 2 K. B. 305, holding that when notice of withdrawal was given when the ship was at sea, this terminated the running of hire under the charter.

> "One who wishes to cancel or rescind a contract can and should do so presently. But the withdrawal of a vessel from a charter party means that the owner shall deprive the charterer of any further enjoyment or use of the vessel and take it into his own exclusive possession. This can be presently done, even where the vessel is at sea, provided she is light; but if there be any cargo on board no withdrawal can be made until the cargo be relanded if the vessel is at the loading port, or until it be discharged if she is at sea or at destination."

It follows from this, that if the charterer tenders, and the owner receives the hire which has become due, before a withdrawal has been effected, the owner no longer has the right to withdraw as the circumstance on which this right is conditioned (default in payment) no longer exists; this is so, even though the owner gives notice of an intention to withdraw before receiving the hire.[2] But a tender of hire is not enough to prevent the exercise of a right that has accrued under a previous default; the owner may refuse to accept the hire tendered until a withdrawal is effected, and may then collect what remains due from the charterer.[3]

§ 9. Spaces at charterer's disposal.

Deck cargo. The ordinary time charter expressly gives the right to ship a deck cargo, but on other

2. Owners of the Langford v. Canadian Forwarding Co., 96 Law Times, 559, 10 Asp. M. C. 414. See Wulfsberg v. Weardale, 85 L. J. K. B. 1717, 13 Asp. M. C. 296.

3. Luckenbach v. Pierson, supra. See Re Tyrer, 7 Com. Cas. 166; Nova Scotia Co. v. Sutherland, 5 Com. Cas. 106.

forms difficult questions arise. In Patagonia S. S. Co. v. Gans,[1] the charter provided "charterers to have full reach of the holds, including peaks and all covered deck spaces where cargo is ordinarily carried, the same as if vessel loaded for owner's account." It was held that this did not give the charterers the right to load a deck cargo of logs, although the charter gave the charterers the right to the whole of the vessel's carrying capacity and prohibited the owner from shipping cargo on his own account. The measure of damages was a reasonable compensation to the owner for the added privilege of a deck cargo, not the amount of freight which was actually received for the logs.

On the other hand, where the charterer was given "the full reach of the whole of the cargo capacity, including the half-deck," this gave a right to ship a deck cargo of fruit.[2]

Although the duty of loading, in time charters as in other charters, remains upon the owner[3], nevertheless the question is really a question of fact, and if it appears that the loading was in fact done by the charterers, there will be no liability on the part of the owners because the full carrying capacity of the vessel was not utilized.[4]

1. 243 Fed. 532, C. C. A. See Neill v. Ridley, 9 Exchcq. 677.
2. Menantic S. S. Co. v. Pierce, 88 Fed. 308.
3. Munson S. S. Co. v. Glasgow Nav. Co., 235 Fed. 64, C. C. A.
4. The Kaupanger, 241 Fed. 702.

§ 10. Signing bills of lading. The captain shall be under the orders and direction of the charterers as regards agency, or other arrangements.

This clause entitles the charterers to have the master sign bills of lading.

The question often arises as to whether such bills of lading are to be considered as contracts between shipper and time charterer[1] or shipper and owner.[2] It is a frequent practice for the bills of lading to be signed by the charterers and not by the master. Probably such bills of lading would be binding upon the ship[3] in an action in rem, if not upon the owner in personam.

1. For cases so holding, see Jebsen v. Cargo of Hemp, 228 Fed. 143; Benner Line v. Pendleton, 217 Fed. 497, C. C. A., affd. 246 U. S. 353, 62 L. Ed. 770; Brit. & For. Mar. Ins. Co. v. Kilgour, 184 Fed. 174; Burn Line v. U. S. & A. S. S. Co., 162 Fed. 298, C. C. A.; Milburn v. Nord Deutscher Lloyd, 58 Fed. 603; The Beaver, 219 Fed. 139, C. C. A.; Samuel v. West Hartlepool Co., 11 Com. Cas. 115.

2. Field Line v. So. Atl. S. S. Co., 201 Fed. 301, C. C. A.; The Okehampton, L. R. (1913), Prob. 173, 18 Com. Cas. 230; Tillmans v. Knutsford, L. R. (1908), 1 K. B. 185; Wehner v. Dene S. S. Co., L. R. (1905), 2 K. B. 92, 10 Com. Cas. 139.

3. The Sprott, 70 Fed. 327. See The Astraea, 124 Fed. 83; The Centurion, 57 Fed. 412.

Charterers agree to indemnify the owners.

§ 11. And the charterers hereby agree to indemnify the owners from all consequences or liabilities that may arise from the captain signing bills of lading or otherwise complying with the same.

Under this clause, the owners would be entitled to recover if the charterers induced the master to sign clean bills of lading for cargo that was not in apparent good order and condition resulting in the owners having to pay damages to the holders of bills of lading.[1] They could also hold the charterers for damages if the bills of lading failed to give the owners as complete protection as was provided in the charter. For instance, where the charter incorporated the York-Antwerp Rules, bills of lading were issued for a cargo of lumber which did not incorporate these rules. During the voyage it became necessary to jettison the deck cargo, and on arrival at the port of destination, the shipowner was compelled to contribute in general average. By the York-Antwerp Rules there is no contribution for the jettison of deck cargo. It was held that the owner could recover the amount of this contribution from the charterers.[2] The right to indemnity would

1. Kennedy v. Weston, 136 Fed. 166, C. C. A. See Elder Dempster v. Dunn, 15 Com. Cas. 49 (H. of L.).

2. Field Line v. So. Atl. S. S. Co., 201 Fed. 301, C. C. A. See Kruger v. Moel Tryvan Co., L. R. (1907), A. C. 272, 13

probably be implied even though not expressed in the charter.[3]

§ 12. That the master shall use all diligence in caring for the ventilation of the cargo.

This clause puts in express terms what would probably be implied without it. It presents no difficulties in construction.[1]

§ 13. Breakdown clause (sometimes referred to as "cesser of hire clause").

A common form of this clause is as follows: "That in the event of loss of time from deficiency of men or stores, breakdown of machinery, stranding, fire or damage preventing the working of the vessel for more than twenty-four running hours, the payment of the hire shall cease until she be again in an efficient state to resume her service, but should the vessel be driven into port, or to anchorage, by stress of weather, or from any accident to the cargo such detention or loss of time shall be at the charterer's risk and expense."

The purpose of the clause is obviously to relieve the charterer from the payment of hire during the

Com. Cas. 1; Milburn v. Jamaica Fruit Co., L. R. (1900), 2 Q. B. 540.

3. Kruger v. Moel Tryvan Co., supra.

1. See The Craigallion, 20 Fed. 747; The Regulus, 18 Fed. 380.

periods when he has not the use of the vessel. In order to prevent disputes about small claims the loss of time must extend for a period of twenty-four hours or no deduction is allowed. If the period of twenty-four hours is exceeded however, the charterer may deduct hire for the whole period of the loss of time, not deducting the twenty-four hour period therefrom.[1]

The clause specifically defines the contingencies under which a deduction from hire is allowable. If a loss of time occurs from some cause not specifically mentioned, the hire will not cease. This was decided in a case where the vessel was prevented from proceeding by quarantine regulations. It was held that this amounted to a "restraint of princes," but as the clause did not provide for suspension of hire owing to loss of time through restraint of princes, hire ran on.[2] On the other hand, when quarantine does not act upon the ship, but upon the crew—that is, the ship would be free to proceed except for a disability attached to the crew—there is a "deficiency of men," and hire ceases.[3]

Questions also arise as to when the hire is to be

1. Mead-King v. Jacobs, 19 Com. Cas. 380.

2. Clyde Commercial v. West India S. S. Co., 169 Fed. 275; The Hackney, 152 Fed. 520.

3. Northern S. S. Co. v. Earn Line, 175 Fed. 529, C. C. A.; Gow v. Gans Line, 174 Fed. 215; Noyes v. Munson Line, 173 Fed. 815.

resumed after a suspension. The clause provides that "hire shall cease until she be again in an efficient state to resume her service." It has been held that this contemplates physical efficiency, and the charterer cannot refuse to pay hire till the vessel has regained her class, if she is physically efficient.[4] Furthermore, the vessel need not get back to the place where the suspension of hire began, to resume the earning of hire. For instance, if she is compelled to put back to the port from which she sailed, her hire will be resumed the moment she is again physically fit to proceed; the charterer may have to pay for some parts of the voyage twice.[5]

The physical efficiency contemplated differs with regard to the service which the vessel is required to perform. A vessel may be efficient for discharging though not for proceeding. This is illustrated by an interesting case which came before the House of Lords some time ago.[6] There a steamer broke down at sea and was compelled to put into a port of refuge so that loss of time resulted. Temporary repairs were effected but the services of a tug were necessary to bring her to her destination. Once arrived in port, however, she was as efficient as ever for dis-

4. The Queen Olga (Dunlop v. Tweedie), 162 Fed. 490, affd. 178 Fed. 673.

5. Vogemann v. Zanzibar S. S. Co., 6 Com. Cas. 253, 7 Com. Cas. 254; Smailes v. Evans, 33 Times, L. R. 233.

6. Hogarth v. Miller, L. R. (1891), A. C. 48, 7 Asp. M. C. 1.

charging cargo. It was held that she was not again efficient while in tow of the tug, although helping to some extent with her low pressure engine, but that hire commenced again when she reached port as she was then efficient for discharging. This case has been followed under similar facts in the United States.[7] When a vessel was compelled to put back because of an accident to the cargo (shifting), it was held that hire ran on during the period through which the difficulties with the cargo were being remedied, but, the ship still needing repairs, that the hire ceased from this point of time until the ship was again in an efficient state.[8]

The fact that the hire has ceased does not relieve the charterer from the other obligations he has assumed by the charter. He must still pay for the coal, port charges, etc., unless expressly relieved by the terms of the charter.[9] The hire does not cease

7. Lake S. S. Co. v. Bacon, 129 Fed. 819, 137 Fed. 961; Field v. Hafnia S. S. Co., 234 Fed. 187, 236 Fed. 599; 241 Fed. 233, where the ship while in her port of discharge caught on fire and sank. Hire ceased until she reached her dock, and then ran on during the discharging.

8. Burrell v. Green, 12 Asp. M. C. 411. For a case where a ship put into port on account of an accident to cargo (fire) accompanied by no substantial damages to the ship so that the hire ran continuously, see The Hackney, 152 Fed. 520.

9. Northern S. S. Co. v. Earn Line, 175 Fed. 529, C. C. A.; Giertsen v. Turnbull, 1908 Sess. Cas. 1101.

when trouble is first noted, but only when the vessel actually becomes inefficient.[10]

§ 14. Exception clause.

A common form of this clause is "The act of God, enemies, fire, restraint of princes, rulers and people, and all dangers and accidents of the seas, rivers, machinery, boilers and steam navigation and errors of navigation, throughout this charter party, always mutually excepted."

It has been said that this clause, supposedly advisedly, presents a contrast between "steam navigation" and "navigation" as it is only with regard to the latter that "errors" are excepted.[1] "Mutually" means that the exceptions are intended to protect either party from liability to the other whenever performance of any covenant is prevented or delayed by an exception.[2] The fact that a vessel is prevented from performing owing to an excepted cause does not prevent the time from running under the charter. For instance, if a vessel is chartered for a year certain, and before entering upon the charter is so badly wrecked that she cannot be gotten off and repaired until the following year, the charterer can-

10. Giertsen v. Turnbull, supra.

1. The Burma, 187 Fed. 94, C. C. A.

2. Clyde Commercial S. S. Co. v. West India S. S. Co., 169 Fed. 275, C. C. A.; Pool Shipping Co. v. Samuel, 200 Fed. 36, 43.

not claim that she must then enter upon his charter.[3] A time charter may also be frustrated by an excepted cause. Where an English ship, time-chartered for "one Baltic round" was in the Baltic at the outbreak of the European war with the result that redelivery became impossible until the end of the war, it was held that this put an end to the charter.[4] Also, where a Dutch ship under time charter, was ordered by the Dutch government not to continue in the service of the charterers, it was held that the charter was frustrated.[5] If the delay caused by an excepted peril does not frustrate the charter, hire continues to run, unless the facts bring the case under the breakdown clause.[2]

3. Lewis v. Mowinckel, 215 Fed. 710, C. C. A.

4. Scottish Nav. Co. v. Souter, L. R. (1917), 1 K. B. 222, 22 Com. Cas. 154.

5. Atlantic Fruit Co. v. Solari, 238 Fed. 217. The effect of a government requisition on a time charter is not yet definitely settled. Under the English rule the question is whether the requisition at the time when made could be expected to outlast the charter period. If this question is to be answered in the affirmative the charter is put an end to. If not, the charter remains in force subject to the requisition which is a "restraint of princes." Tamplin v. Anglo Mexican Co., L. R. (1916), A. C. 397; Chinese Engineering Co. v. Sale, 14 Asp. M. C. N. S. 95. For the present rule in the United States, see The Isle of Mull, 257 Fed. 798.

§ 15. Arbitration clause.

Time charters ordinarily contain an arbitration clause. This is not enforceable in the United States.[1] The damages for breach of an agreement to refer to arbitration are so indefinite that nothing can be recovered.[2]

§ 16. Lien clause.

"That the owners shall have a lien upon all cargoes and sub-freights, for any amounts due under this charter, and the charterers to have a lien upon the ship for all moneys paid in advance and not earned."

Much litigation has arisen respecting the effect of giving the owner a lien upon cargoes and sub-freights. Without an express clause giving a lien, none would exist. When freight is payable upon delivery, the owner has a lien on the cargo for freight. When, however, the owner contracts for payments in advance at stated intervals, it is obvious

1. Gough v. Hamb. Am. Line, 158 Fed. 174; Ross v. Compagnie, etc., 45 Fed. 207. The question as to whether an arbitration agreement made in a foreign country, where such agreements are binding, between subjects of that country, will bar a suit in the United States is now pending before the Supreme Court. In the Circuit Court of Appeals, it was held that the arbitration agreement was not a bar. Akties v. Rederi Atlanten, 250 Fed. 935, C. C. A.

2. Munson v. Straits of Dover, 99 Fed. 787, affd. 102 Fed. 927.

that cargo may be delivered at a time when no hire is due. This is taken as evidence that the owner did not intend that the cargo should be subject to a lien and the lien is accordingly considered waived.[1] If the owner wishes to retain his lien, he should expressly contract to that effect,[2] and all usual forms of time charter do have such clauses.

This does not, however, mean that cargo on board is always subject to the owner's lien for hire. Under the ordinary form of time charter, the master is to be under the charterer's orders as respects agency and other arrangements, and this includes the right to require the master to sign bills of lading without incorporating the charter party therein.[3] If the bills of lading do not refer to the charter party, a shipper cannot be held for the charter hire,[4] even though he has knowledge of the charter and its terms.[5]

1. Raymond v. Tyson, 17 How. 53, 15 L. Ed. 47; The Moringen, 98 Fed. 996.

2. Raymond v. Tyson, supra; Acties. Thorbjorn v. Harrison, 260 Fed. 287.

3. See The Shillito, 3 Com. Cas. 44.

4. The Albert Dumois, 54 Fed. 529; Larsen v. 150 Bales Sisal Grass, 147 Fed. 783.

5. Turner v. Haji Goolan, L. R. 1904, A. C. 826. See Acties Thorbjorn v. Harrison, supra, where it was held that the property of a sub-charterer was not subject to a lien for unpaid hire. Bills of lading in that case had been issued for Custom House purposes only.

The owner's lien upon the sub-freights has also been frequently before the courts. It has been held that this lien, which is stipulated for by the owner, is superior to the general equity of a pledge on the part of the charterer.[6] Nor is a shipper or consignee entitled to set off against the owner's lien on the sub-freight, a balance due him from the charterer on general account.[7]

Difficult questions arise when the charterer has in turn sub-chartered. There is then no privity of contract between owner and sub-charterer. Nevertheless, the courts have allowed the owner to hold these bill of lading freights for his hire even though they were the property of the sub-charterer. In an English case[8] this conclusion was reached on the ground that the shipper's contract was with the owner, and that the owner had a right to apply the bill of lading freight to his unpaid hire before paying over the balance to the sub-charterer. In Jebsen v. A Cargo of Hemp,[9] however, the same result was reached though the court found that the shipper had made his contract with the sub-charterer. In The Albert Dumois,[10] the consignees had been notified that the

6. Freights of the Kate, 63 Fed. 707.

7. Amer. Stl. Bge. Co. v. Ches. & O. Coal Agcy. Co., 115 Fed. 669, C. C. A.

8. Wehner v. Dene, L. R. (1905), 2 K. B. 92, 10 Com. Cas. 139.

9. 228 Fed. 143.

10. 54 Fed. 529.

owner claimed a lien upon the bill of lading freight; nevertheless, they paid it over to the sub-charterer. It was held that the owner could make them pay again.

Once the freight has been paid over to the person entitled to receive it, it loses its character as freight, and is no longer subject to a lien.[11]

The clause giving a lien "for any amounts due under this charter" does not include damages for the less profitable employment of the vessel, if withdrawn from the charterer's service because of insolvency.[12]

§ 17. Steamer is to be docked, bottom cleaned and painted whenever charterers and master think necessary, but at least once in every six months, and payment of hire to be suspended until she is again in proper state for the service.

The obligation to dock the vessel once every six months is an absolute one, whether docking is necessary or not.[1] In case of a failure to perform, the charterer may have damages based on the loss of

11. Tagart v. Fisher, L. R. (1903), 1 K. B. 391, 8 Com. Cas. 133; but see Amer. Stl. Bge. Co. v. Ches. & O. Coal Co., supra.

12. Freights of the Kate, supra; Wehner v. Dene, supra.

1. The Falls of Keltie, 108 Fed. 416; Noyes v. Munson Line, 173 Fed. 815. See generally, Bollman v. Tweedie, 150 Fed.

speed of the vessel.[1] The vessel must be docked although she has been in the charterer's service for less than six months, providing more than six months have elapsed since her last docking.[2] If the charter does not provide for docking, the charterer has no claim against the owner for damages although the vessel's bottom may be foul.[3] When the steamer's hire is to be suspended during "docking," this obviously means dry-docking and not when she is at a dock, for loading or discharging purposes.[4]

§ 18. Damage to vessel. "That the owners are to provide ropes, falls, slings and blocks, necessary to handle ordinary cargo up to three tons (of 2240 pounds each) in weight, also lanterns for night work."

Several cases have come before the courts where the chartered vessel has sustained injury when loading a weight greater than three tons. Although the cases are not all consistent with any definite theory, the decisions holding the charterer liable are per-

434; Wilhelmsen v. Tweedie, 149 Fed. 928; Albis v. Munson, 130 Fed. 32, affd. 139 Fed. 234.

2. Munson v. Miramar S. S. Co., 166 Fed. 722, C. C. A.

3. Glasgow v. Bacon, 132 Fed. 881, affd. 139 Fed. 541.

4. Anderson v. Bowring, 197 Fed. 675.

haps to be based upon the proposition that the owner has authorized the use of weights only up to three tons and that the charterer must be taken to have assumed the risk of injury in case he loads any heavier weights.[1] On the other hand, if the ship is injured by ordinary "lawful cargo" such as iron ore or asphalt, the owner has no right to recover.[2] It has been said that the duty of loading and discharging rests upon the owner under a time charter.[3]

§ 19. Steamer to work night and day if required by charterers, and all steam winches to be at the charterers' disposal during loading and discharging, and steamer to provide men to work same both day and night as required. Charterers agree to pay for all night work at the current local rate.

In the harbor of New York, and perhaps elsewhere, the stevedores refuse to work if the ship's

1. Bollman v. Tweedie, 150 Fed. 434 (7 tons); Brit. Marit. Trust v. Munson, 149 Fed. 533 (18 to 14 tons); Bull v. N. Y. & P. R. S. S. Co., 167 Fed. 792, C. C. A. (18 tons); Salmen Brick Co. v. Donald, 194 Fed. 800 C. C. A.

2. Dene S. S. Co. v. Munson, 103 Fed. 983; Worrall v. Davis Coal Co., 113 Fed. 549, affd. 122 Fed. 436; but see, The Bergenhus, Olsen v. U. S. Spg. Co., 195 Fed. 147, where the charterer was made liable for damage done to the ship in loading lumber. Point not raised in the appeal in 213 Fed. 18.

3. Munson v. Glasgow Nav. Co., 235 Fed. 64, C. C. A.

crew run the winches. It therefore becomes necessary to hire outside winchmen, and the question has come up as to who should pay their wages. It is now authoritatively settled that the owner has fulfilled his obligation if he tenders competent winchmen, ready to do their duty; he need not furnish winchmen who are personally pleasing to the stevedores.[1] If a stevedore is injured by the negligence of a member of the vessel's crew, acting as winchman, he may hold the time charterer liable on the theory that the winchman is the charterer's servant,[2] but the charterer has a remedy over against the owner[3] for the damages paid the stevedore.

§ 20. Charterers to have liberty of subletting the steamer if required by them.

If this right were not expressed it would be implied.[1]

A sub-charter even on the same terms as the original charter does not create any privity between

1. Constantine & Pick. v. Tweedie, 159 Fed. 706, C. C. A.; Brit. Marit. Trust v. Munson, 149 Fed. 533; The Santona, 152 Fed. 516; Contra, Golcar v. Tweedie, 146 Fed. 563; Wehner v. Dene, L. R. (1905), 2 K. B. 92, 10 Com. Cas. 139.

2. Callahan v. Munson, 209 N. Y. 546.

3. Munson v. Glasgow Nav. Co., 235 Fed. 64, C. C. A.

1. The Ely, 110 Fed. 563.

owner of the ship and the sub-charterer,[2] but for damage done to the sub-charterer's cargo after it had been laden on board, the sub-charterer would have a remedy against the ship in rem.[2] But where there was a guarantee of speed in the original charter which was repeated in the sub-charter, the sub-charterer was held entitled to sue the ship in rem for damage to a fruit cargo caused by breach of the guarantee.[3] A novation (that is to say, a new contract between the owner and the assignee, releasing the original charterer) may, of course, be effected where there has been an assignment of charter.[4] This is a question of fact.[5]

2. The Banes, 221 Fed. 416, C. C. A.
3. The Astraea, 124 Fed. 83.
4. Guffey v. Coastwise Trans. Co., 180 Fed. 677, C. C. A.
5. See Ceballos v. Munson, 93 App. Div. (N. Y.) 593.

CHAPTER II.

VOYAGE CHARTERS.

Section 21. Statements as to vessel's position and time of sailing. (See also, generally, Section 1.)
22. Cancelling date.
23. When no cancelling date.
24. Safe ports. So near as she may safely get and always lie afloat.
25. Effect of bill of lading when ship under charter.
26. Incorporation of charter party in bill of lading.
27. Cesser clause.
28. Freight.
29. Advance freight.
30. Freight pro rata.
31. Lump sum freight.
32. Dead freight.
33. Penalty clause.
34. Commissions.

§ 21. Statements as to vessel's position and time of sailing. (See also, generally, Section 1.)

It is customary for charters for a voyage to contain a statement as to the position of the ship when the charter is entered upon. This is obviously of great importance to the charterer, for the reasons expressed by the Supreme Court in Lowber v. Bangs:[1]

1. 2 Wall. 728 at 737, 17 L. Ed. 768.

Statements as to vessel's position and time of sailing.

> "Promptitude in the fulfillment of engagements is the life of commercial success. The state of the market at home and abroad, the solvency of houses, the rates of exchange and of freight, and various other circumstances which go to control the issues of profit or loss, render it more important in the enterprises of the trader than in any other business. The result of a voyage may depend upon the day the vessel arrives at her port of destination, and the time of her arrival may be controlled by the day of her departure from the port whence she sailed."

Statements as to the ship's position are made in different ways. Where it was stated in a charter made on August 1st that a steamer was "now sailed or about to sail from Benizaf with cargo," whereas on August 1st the steamer was less than half loaded and did not sail till August 7th, the Supreme Court held that the statement was a warranty or condition precedent; that it was broken; and that the charterers could reject the vessel.[2] Where the charter stated that the vessel was "at Santos or sailed" this meant that she would soon sail or had sailed.[3] Where the charter stated that the vessel was "now in Finland bound to London," this meant that she was to proceed to London direct and did not justify her loading cargo at another port in Finland.[4] In an English case, arising under a con-

2. Davison v. Von Lingen, 113 U. S. 40, 28 L. Ed. 885; The March, 25 Fed. 106; The Orsino, 24 Fed. 918, acc.

3. Olsen v. Hunter-Benn, 54 Fed. 530.

4. Engman v. Palgrave, 4 Com. Cas. 75.

tract for the sale of goods which provided for "clearance not later than May 21st," it was held that the contract was fulfilled if the vessel actually got her clearance before May 21st though she did not sail until some time later.[5]

Sometimes, besides containing a statement of the vessel's position, there is a further agreement in the charter as to the vessel's sailing for the loading port. Where the charter provided that the ship was to "proceed from Melbourne to Calcutta with all possible dispatch," but the master could not be notified of the charter while at Melbourne with the result that he proceeded first to Manila, it was held that this justified the charterer in refusing to load.[6] So where the charter provides that the vessel shall sail from the port where she is stated to be before a certain day, if she does not sail, this justifies the charterer in refusing to load.[7] But it seems that if the charter also contains a cancelling date which the vessel makes, the fact that she did not sail for her loading port in the time stated in the charter,

5. Thalman v. Texas Star Mill Co., 4 Com. Cas. 265, 5 Com. Cas. 321.

6. Lowber v. Bangs, 2 Wall. 728, 17 L. Ed. 768.

7. Pedersen v. Pagenstecher, 32 Fed. 841; The Francesca Curro, F. C. No. 5029; Deshon v. Fosdick, 1 Woods, 286, F. C. No. 3819. Where a charter provided for a sailing "about middle of September," it was held that this could mean as late as September 29th where the parties so construed it. Bennett v. Lingham, 31 Fed. 85.

does not justify a refusal to load.[8] A provision that the vessel shall proceed "with all convenient speed" means that she will proceed without unnecessary delay, and this also constitutes a condition precedent.[9]

A misstatement of the vessel's position even though oral and not incorporated in the charter, permits the charterer to refuse to load.[10] If the charterer knows at the time the charter is made that the statement of the vessel's position as made in the charter, is incorrect, he cannot cancel.[11]

§ 22. Cancelling date.

This is a provision of great importance in modern charter parties. A common form is, "charterers to have the option of cancelling this charter party if ship is not ready to load on or before * * *"

Sometimes the cancelling clause is found together with a statement of the ship's position or with a provision as to her sailing. It has been held that if

8. Rosasco v. Pitch Pine Lbr. Co., 138 Fed. 25, C. C. A.

9. Olsen v. Hunter-Benn, 54 Fed. 530. See Gill v. Browne, 53 Fed. 394, C. C. A.; Antola v. Gill, 7 Fed. 487, where a bark was to sail "without delay." Giuseppe v. Mfrs. Exp. Co., 124 Fed. 663, "with all possible despatch." See Forest Oak S. S. Co. v. Richard, 5 Com. Cas. 100.

10. Funch v. Abenheim, 20 Hun, 1; Gray v. Moore, 37 Fed. 266.

11. Lovell v. Davis, 101 U. S. 541, 25 L. Ed. 944.

the statement of the ship's position is incorrect, the charterer may lawfully refuse to load, although the vessel has made her cancelling date.[1] But apparently the rule is otherwise if the charter merely prescribes when the ship is to sail for the loading port.[2]

It would seem that the ship has up to midnight of the last day mentioned in her charter[3] and that when the last day falls on a Sunday, a tender on the ensuing Monday would be sufficient.[4]

In order to make a tender the vessel must be ready for cargo; that is, she must be able to put all her holds at the disposal of the charterer.[6] She may, however, have enough ballast on board to keep her upright.[7] Practical and substantial readiness is the test.[8] It is enough if she is ready for a cargo of general merchandise, she need not anticipate the special cargo the charterer intends to ship.[9] If a grain cargo is to be carried, the ship is ready although the top board of her shifting boards is not

1. The Orsino, 24 Fed. 918; The March, 25 Fed. 106.

2. Rosasco v. Pitch Pine Lbr. Co., 138 Fed. 25, C. C. A.

3. Dalbeattie S. S. Co. v. Card, 57 Fed. 304; Rupprecht v. Delacamp, 165 Fed. 381, affd. 169 Fed. 1022.

4. The Harbinger (Gill v. Browne), 50 Fed. 941, affd. 53 Fed. 394.

6. Crow v. Myers, 41 Fed. 806; Groves v. Volkart, 1 Cab & E. 309.

7. Rupprecht v. Delacamp, supra.

8. Disney v. Furness, 79 Fed. 810.

9. Greenwell v. Ross, 34 Fed. 656.

up;[10] so, if there is some dunnage in the holds which could be removed if objected to.[11]

The charterer is not obliged to exercise his option until the ship is at the loading port; the shipowner cannot call upon him to state his intentions until he is ready to make a tender.[12] Nor does the fact that the ship is prevented from arriving at the loading port by an excepted peril, deprive the charterer of the right to cancel.[13] Where a vessel was to carry a cargo to the United States freight free, in consideration of the freight she was to earn on a return voyage, but her charter was cancelled because of lateness on arrival in the United States, it was held that her owner was entitled to a reasonable freight on the cargo carried to the United States.[14]

§ 23. When no cancelling date.

If there is no provision in the charter giving the charterer the right to cancel if the ship is not ready by a day certain, the charterer cannot refuse to load unless the delay is so great as to frustrate the adven-

10. Disney v. Furness, supra. See The Orsino, 24 Fed. 918.

11. Wencke v. Vaughn, 60 Fed. 448, C. C. A.

12. The Samuel W. Hall, 49 Fed. 281; Moel Tryvan v. Weir, 15 Com. Cas. 61, 307; Karran v. Peabody, 145 Fed. 166, C. C. A.

13. Karran v. Peabody, supra; Smith v. Dart, L. R. 14, Q. B. D. 105.

14. O'Brien v. Bags of Guano, 48 Fed. 726.

ture.[1] Exactly when frustration may be said to occur is a doubtful question. If the delay is so great as to make impracticable the adventure contemplated by both parties, this releases them from the charter. But if one of the parties, the charterer for instance, had some particular object in view, not known to the other party, the mere fact that delay has prevented this being carried out, will not put an end to the charter,[2] and the charterer is liable if he refuses to load the ship.

§ 24. Safe ports. So near as she may safely get and always lie afloat.

What ports are to be considered unsafe in a physical and political sense so as to justify the master in refusing to proceed has already been discussed. (Supra, sec. 5.) The above clauses, however, also frequently are depended upon in voyage charters where because of the ship's draft, or for some like reason, the actual loading or discharging spot cannot be reached, and the question as to who must bear the expense of lighterage must be determined.

The word "safely" means "safely as a loaded ship," and therefore if the ship is loaded at a place which she cannot leave with a full cargo, the char-

1. See Jackson v. Union Marine Ins. Co., L. R. 10 C. P. 125.

2. Thebideau v. Cairns, 171 Fed. 233; Schr. Mahukona Co. v. Nelson, 142 Fed. 615; Adler v. Galbraith, 156 Fed. 259.

terer must furnish cargo in lighters outside the bar at his expense.[1] An interesting case was decided by the Supreme Court where a sailing vessel having steel masts was ordered to discharge above Brooklyn Bridge.[2] The masts were so tall that it was impossible to pass under the bridge without cutting them. The vessel accordingly lightered her cargo, and the question before the court was as to who should pay for the lighterage. The charter which was incorporated in the bills of lading contained the usual clauses requiring delivery at a "safe port" "or so near thereunto as she (the vessel) may safely get" "always afloat" "lighterage, if any, at account of receivers" It was held that the cost of the lighters fell upon the consignees. Where the loading port was named, and the charter provided that the loading was to be done where the vessel "could always lie afloat, lighterage to be at the expense of the cargo," and the vessel could not load a full cargo because of a bar some distance down the river from her loading port, it was held that in the absence of the clause "so near as she may safely get," the

1. Bacon v. Ennis, 110 Fed. 404, affd. on this point 114 Fed. 260.

2. Mencke v. A Cargo of Java Sugar, 187 U. S. 248, 47 L. Ed. 163. See Man. Liners v. Va. Caro. Chem. Co., 194 Fed. 463, affd. 204 Fed. 564, holding that by the German law the expense of lighterage falls upon the ship.

charterer was not required to lighter down enough cargo to fill her up after she had passed the bar.[3]

§ 25. Effect of bill of lading when ship under charter.

The bill of lading regulates the rights and liabilities between ship and shipowner on the one hand and goods and goods owner on the other. Unless the bill of lading is in some way made subject to the charter party, the shipowner will be restricted in enforcing his rights under the charter to the personal responsibility of the charterers, and may be subjected by holders of the bills of lading to liabilities beyond those he assumed under the charter.

The rights of the bill of lading holder will vary with the circumstances.

If the bill of lading holder is the charterer, the bill of lading will be regarded as a mere receipt for the goods, and, under ordinary circumstances, the provisions of the charter party alone will determine the rights of the parties.[1] It is possible for the parties to modify their previous charter party contract, by the bill of lading, but this will not be pre-

3. Tweedie v. N. Y. & Boston Dyewood Co., 127 Fed. 278, C. C. A.

1. Ardan S. S. Co. v. Thebaud, 35 Fed. 620; Huron Bge. Co. v. Turney, 71 Fed. 972; The Fri, 154 Fed. 333, C. C. A.

sumed. If the so-called charter is merely an informal agreement which the parties must have intended to supplement by a more formal contract, the above rule does not apply and the provisions of the bill of lading will constitute a part of the contract of carriage.[2]

If the bill of lading holder is not the charterer, his rights will depend upon the terms of the charter, upon his knowledge of the charter, and upon whether or not the bill of lading incorporates the charter.

If the charter provides either expressly or by implication, that the bills of lading are to be made subject to the charter provisions, then whether or not an independent shipper or consignee is bound by the charter will depend upon knowledge of the charter party on his part.[3] If he has no knowledge actual or constructive, then he cannot be bound by the charter terms. The master has undoubtedly general authority to sign bills of lading, and if he has exceeded his instructions, this does not affect a third party acting in good faith.[4] Knowledge may, of course, be given by an indorsement on the bill of lading.[5]

2. Tweedie Trading Co. v. Craig, 159 App. Div. 192; The Caledonia, 43 Fed. 681; The Queensmore, 51 Fed. 250; The Enrique, 7 Fed. 490.

3. The Draupner, L. R. (1910), A. C. 450, 11 Asp. M. C. 436.

4. The Boskenna Bay, 22 Fed. 666.

5. Nine Hundred and Seventy-nine Boxes of Sugar, 7 Ben. 242, F. C. No. 10,271.

Effect of bill of lading when ship under charter.

Difficult situations often arise when, after shippers have laden goods upon a chartered ship, the master claims to issue bills of lading incorporating the charter whereas the shippers insist on having bills of lading issued which do not refer to the charter. In case the goods have been laden upon the ship without knowledge on the part of the shipper of the charter, he is entitled to have the goods returned to him.[6] If he has put the goods on board under a contract with the charterer, at a certain rate of freight, and the shipowner refuses to carry, except at an advanced rate, but the shipper refuses to pay more than the amount specified in his contract with the charterer, it has been held that if the shipowner chooses to transport the goods, he can collect as freight no more than the amount the shipper has stated that he is willing to pay.[7] On the other hand, if the shipper knows or ought to know that his goods will be shipped under a charter, then he may become liable to pay as freight more than the sum for which he has agreed with the charterer,[8] i. e., he will be taken to have shipped his goods subject to the charter party.

6. Peek v. Larsen, L. R. 12 Eq. 378; The Torgorm, 48 Fed. 584; O'Connell v. Bales of Sisal Hemp, 75 Fed. 410.

7. The Ada, 233 Fed. 325.

8. Ralli v. Paddington S. S. Co., 5 Com. Cas. 124.

In case the charter authorizes the signing of bills of lading not subject to the charter then knowledge alone is not sufficient to subject the shipper or consignee to the charter terms.[9] The owner has authorized his master to make a new contract with the shippers, and the owner cannot repudiate what he has authorized his master to do. In order to make the charter a part of the contract under which the goods are shipped it must be expressly incorporated in the bills of lading.

§ 26. Incorporation of charter party in bill of lading.

Frequently it is desired by the charterer to make the goods subject to the liens given by the charter; also in case of loss or damage the question arises whether the charter party as well as the bill of lading constitutes a part of the contract under which the goods are carried. It is settled law that the charter may be made part of the contract under which the goods are carried by an appropriate ref-

9. Turner v. Haji Goolam, L. R. (1904), A. C. 826. A provision in the charter that the master shall sign bills of lading "as presented, without prejudice to this charter," means as rightfully presented, and the master cannot be compelled to sign bills of lading stating facts which are not true or to give clean bills of lading for goods on deck, The Kirkhill, 99 Fed. 575, C. C. A.

erence in the bill of lading.[1] For instance, if the bill of lading provides "freight as per charter" this subjects the goods to a lien for the charter freight.[2] If the bill of lading reads "freight and all other conditions as per charter," this incorporates in the bill of lading contract, in addition to the agreement as to freight, all conditions to be performed by the receiver of the goods,[3] including the payment of demurrage.[4] In order to incorporate the charter party exceptions, however, it is necessary to go further and expressly include the word "exceptions;" to use the word "conditions" is not enough.[5]

In case several bills of lading incorporating the charter have been issued, each covering a different

1. O'Connell v. Bales of Sisal Hemp. 75 Fed. 408; Burrill v. Crossman, 65 Fed. 104; The Peer of the Realm, 19 Fed. 216; Vane v. Wood, 231 Fed. 353; Gronstadt v. Witthoff, 21 Fed. 253 (place of discharge); The Swallow, 27 Fed. 316, affd. 30 Fed. 204 (place of discharge); Man. Liners v. Va. Caro. Chem. Co., 194 Fed. 463, affd. 204 Fed. 564; The Sandfield, 79 Fed. 371; The Pietro G., 39 Fed. 366; Contra, West Hart. Nav. Co. v. Kainit, 151 Fed. 886.

2. Crossman v. Burrill, 179 U. S. 100; O'Connell v. Bales of Sisal Hemp, 75 Fed. 408.

3. Burrill v. Crossman, 65 Fed. 104; Serraino v. Campbell, L. R. (1891), 1 Q. B. 283; Gronstadt v. Witthoff, 21 Fed. 253.

4. Porteus v. Watney, L. R. 3 Q. B. D. 534; Taylor v. Fall River Iron Works, 124 Fed. 826; The Dictator, 30 Fed. 637; Gilbert v. Borden, 170 Fed. 706.

5. Serraino v. Campbell, supra; Kruger v. Moel Tryvan, L. R. (1907), A. C. 272.

lot of goods, any one lot of goods can be held for all of the freight[6] or all of the demurrage[7] due under the charter. But where the charter provided for freight at 70 shillings per ton and the charter was incorporated in the bill of lading, it was held that a part of the cargo, which was covered by a bill of lading could be held only for freight calculated at the rate of 70 shillings per ton on its own weight and not for the freight due on the entire cargo.[8]

In order to incorporate the charter party a clear reference to it must be made.[9] Thus if the bills of lading are endorsed merely to the effect that a certain number of days for unloading remain, this will not incorporate the charter.[10] Nor will a clause "freight as per charter and all its conditions" incorporate the demurrage clause.[11] The clause "other conditions as per charter" will not impose a lien upon the goods for the charter freight.[12]

Nor will a broad clause such as "all other conditions and exceptions as per charter party" incorporate clauses not having to do with the carriage of

6. The Karo, 29 Fed. 652.

7. Porteus v. Watney, L. R. 3 Q. B. D. 534.

8. Fry v. Mercantile Bank, L. R. 1 C. P. 689.

9. The Querini Stamphalia, 19 Fed. 123; The Titania, 131 Fed. 229, C. C. A.; The Pietro G., 39 Fed. 366.

10. Chappel v. Comfort, 10 C. B. N. S. 802.

11. Dayton v. Parke, 142 N. Y. 391.

12. Gardner v. Trechman, L. R. 15 Q. B. D. 154.

the goods, for instance an arbitration clause[13] or a clause making the statement in the bill of lading conclusive proof of the amount of cargo shipped.[14]

§ 27. Cesser clause.

Closely connected with the subjects just discussed is the so-called "cesser clause." A common form of this clause is "charterer's liability to cease on cargo being shipped, the master having a lien upon the cargo for freight, dead freight and demurrage."

The general construction of this clause is well settled. The personal liability of the charterers and the right to hold the goods for freight, dead freight and demurrage are regarded as equivalents and, in order to deprive the owner of the personal responsibility of the charterer, the owner must be given a right against the goods. Thus, if the charterers choose to deprive the owners of their lien upon the goods for sums due under the charter by failing to incorporate the charter in the bills of lading, they cannot take advantage of the cesser clause.[1] On the other hand, if the shipowner's rights

13. Thomas v. Portsea S. S. Co., L. R. (1912), A. C. 1, 12 Asp. M. C. 23.

14. Hogarth v. Blythe, L. R. (1917), 2 K. B. 534, 22 Com. Cas. 334.

1. Crossman v. Burrill, 179 U. S. 100; Dayton v. Parke, 142 N. Y. 391; Bailey v. Mfrs. Lbr. Co., 224 Fed. 806; Jenneson v. Sec'y of State, L. R. (1916), 2 K. B. 702; Dewar v. Mowinckel, 179 Fed. 355, C. C. A.

under the charter are preserved in the bill of lading, and a lien is created against the goods the liability of the charterers is put an end to.[2] The principle is well expressed by the Supreme Court in Crossman v. Burrill,[3] "the cesser clause is to be construed, if possible, as inapplicable to a liability with which the lien is not commensurate." In that case, action was brought to recover demurrage for delay in discharging the bark Kate Burrill at Rio Janeiro. The charter contained the ordinary form of cesser clause. The bills of lading were endorsed "freight as per charter party." It was held that this was not sufficient to incorporate the charter party clause with regard to demurrage; that accordingly the owners could not have held the cargo for demurrage under the charter; consequently the cesser clause was no defense.

There is great confusion in the English decisions under charters where the stipulation for demurrage is not exhaustive (e. g., there is a provision for demurrage only during loading or the number of demurrage days is limited). Under such charters the question arises as to whether the lien for demurrage, includes a lien for damages for detention. The question has not come up in the United States, but

2. Francesco v. Massey, L. R. 8 Ex. 101; Kish v. Cory, L. R. 10 Q. B. 553; Sanguinetti v. Pac. Steam Nav. Co., L. R. 2 Q. B. D. 238.

3. 179 U. S. 100 at 108.

it would seem that the courts would hold that a lien for "demurrage" would include damages for detention as well as "demurrage" in the strict sense of the word.[4]

The cesser clause applies to demurrage accrued at the port of loading as well as at the port of discharge for the lien clause is usually construed to give a lien for demurrage accrued during the loading as well as during the discharge.[5] But if it is doubtful if the lien clause creates a lien upon the cargo for demurrage during the loading, then the cesser clause will not release the charterer for liability accrued prior to sailing.[6]

If the charterers themselves take delivery under the bill of lading, they cannot rely upon the cesser clause; they may be held liable under the provisions of the bill of lading although under the charter their liability has ceased.[7]

§ 28. Freight.

If words were always used with precision it would probably be said that freight meant the compensa-

4. See Donnell v. Amoskeag Co., 118 Fed. 10, C. C. A.

5. Rederiaktieselskabet Superior v. Dewar, 14 Com. Cas. 320. See Donnell v. Amoskeag Co., 118 Fed. 10, C. C. A.

6. Elvers v. Grace, 244 Fed. 705, C. C. A.; Schmidt v. Keyser, 88 Fed. 799, C. C. A.

7. Gullischen v. Stewart, L. R. 13, Q. B. D. 317; The Eliza Lines, 61 Fed. 308 at 326.

tion for the carriage of goods. The word is commonly used in a broader sense, however, to include what is paid for the use of a ship. For instance if a shipowner hires his ship for a voyage for a lump sum to carry a cargo this is commonly spoken of as freight.

The chief questions that arise with regard to freight are when it has been earned and also questions of amount.

When earned. By the law, both of the United States and of England, in the absence of some stipulation to the contrary, the goods must be carried to destination before any freight is earned.[1] It makes no difference that the shipowner is prevented by some obstacle beyond his control. In The Harriman[2] the charter provided for the carriage of a cargo of coal to Valparaiso to be delivered to the Spanish fleet. Before the ship could make delivery the fleet had scattered, and the ship returned to the loading port as the master feared to make delivery at a port which was hostile to the Spaniards. It was held that no freight was earned. But if the ship is ready to make delivery, and the consignee is unable to receive, this does not deprive the shipowner of his freight. In Cargo ex Argos[3] petroleum was shipped

1. Burn Line v. U. S. & Aust. S. S. Co., 162 Fed. 298, C. C. A.
2. 9 Wall. 161, 19 L. Ed. 629.
3. L. R. 5 P. C. 134.

from England to be carried to France. On arrival off the French port it was found that the landing of the petroleum had been forbidden by the French authorities. The petroleum was accordingly brought back to England. It was held that the owner was entitled not only to freight from England to France, but also to back freight from France to England. Difficult questions sometimes arise when the charter provides for a cargo out and back. In such a case if there is but one entire contract, the owner must carry both cargoes before any freight is earned; if the ship is lost on the homeward voyage he gets nothing.[4] On the other hand, if the charter can be construed as separable, each voyage will be considered by itself.[5] In O'Brien v. Bags of Guano,[6] the charter provided that the ship should carry a cargo to a United States port freight free where a cargo of cotton was to be loaded for which freight was to be paid. The charter also gave the charterer the right to cancel in case the ship should not arrive at the U. S. port by a certain date. The charterer cancelled because of lateness. It was held he must pay a reasonable freight for having his cargo carried to the U. S. port.

The fact that the cargo has been damaged, if by

4. The Erie, 3 Ware, 225 F. C. No. 4512; Penoyer v. Hallett, 15 Johns. 332.

5. The Erie, supra.

6. 48 Fed. 726.

a cause for which the shipowner is not responsible, is no bar to an action for freight.[7] It is only when the thing shipped ceases to exist in specie that the shipowner's right to freight is lost.[8] If the goods are damaged by a cause for which the shipowner is responsible, the amount of the damages may be set off in an action brought for the freight.[9]

§ 29. Advance freight.

Freight is frequently paid in advance to the shipowner. By the law of England such payments are not recoverable,[1] but by the law of the United States, unless otherwise stipulated, this advance payment must be earned by the proper delivery of the goods, or else it must be repaid.[2] It is, however, common for charters and bills of lading to provide that prepaid freight is to be at the risk of the shipper or

7. Seaman v. Adler, 37 Fed. 268; Jordan v. Ins. Co., 1 Story, 342; Steelman v. Taylor, 3 Ware, 52, F. C. No. 13,349; The Juliet C. Clarke, F. C. No. 7580.

8. See Ridyard v. Phillips, F. C. No. 11,820; Asfar v. Blundell, L. R. (1896), 1 Q. B. 123; Hugg v. Augusta Ins. Co., 7 How. 595, 12 L. Ed. 834.

9. Snow v. Carruth, 1 Spr. 324, F. C. No. 13,144.

1. De Silvale v. Kendall, 4 M. & S. 37.

2. Burn Line v. U. S. & Aust. S. S. Co., 162 Fed. 298, C. C. A.; De Sola v. Pomares, 119 Fed. 373, contrary rule cannot be shown by custom. Pac. Coast Co. v. Reynolds, 114 Fed. 877, C. C. A.; The Harriman, 9 Wall. 161, 19 L. Ed. 629.

charterer. Charters frequently provide that when advance freight is paid there is to be a deduction of a certain percentage for insurance. This is probably evidence of an intention that such freight is to be at the charterer's risk.[3] In Firemen's Fund Ins. Co. v. Globe Nav. Co.,[4] the charterer made the deduction, and insured the freight. The ship was lost on the voyage. It was held that the insurance must be deemed to have been taken out for the owner's benefit.

In line bills of lading there are often elaborate provisions with regard to advance freight. Where the bill of lading provided "prepaid freight to be considered earned on shipment of the goods" and further that the freight was not to be returned "ship lost or not lost," and the ship was lost soon after sailing, it was held that the shipowner could collect the freight from the various shippers.[5] In case the

3. Burn Line v. U. S. & Aust. S. C. Co., supra; Monsen v. Amsinck, 166 Fed. 817. See Mehrbach v. Liv. S. S. Co., 12 Fed. 77, 18 Fed. 192.

4. 234 Fed. 273.

5. Natl. Stm. Nav. Co. v. Int'l Paper Co., 241 Fed. 861, C. C. A.; Portland Flour Mills v. B. & F. Mar. Ins. Co., 130 Fed. 860, C. C. A., "freight to be considered earned at any stage of the entire transit," The Queensmore, 53 Fed. 1022, C. C. A. See Pac. Coast Co. v. Reynolds, supra. In the recent cases of Allanwilde Trans. Co. v. Vacuum Oil Co., 248 U. S. 377, 63 L. Ed. 312; Internat'l Paper Co. v. The Gracie D. Chambers, 248 U. S. 387, 63 L. Ed. 318, and Standard Varnish Works v.

goods are lost by a cause for which the carrier is responsible, their owner may recover their value at the port of destination without deducting the freight.[6] This, in effect, makes the freight recoverable.

§ 30. Freight pro rata.

The law of the United States, like the law of England, does not give the shipowner his freight (if not otherwise stipulated) unless the goods have been carried to destination. It matters not how meritorious the efforts of the shipowner may have been, and of how great advantage to the shipper; if the shipper is obliged to accept the goods short of their destination no freight is earned.[1] The loss of the ship,

The Bris, 248 U. S. 393, 63 L. Ed. 321, it was held that the ship owners were entitled to retain the freight paid in advance under the stipulations in the charter parties and bills of lading although the voyage was not performed, in the first two cases because of a governmental order forbidding sailing vessels to traverse the war-zone, in the third case because the export of the goods was prohibited. The fact that the vessels in the last two cases had not "broken ground" was held immaterial.

6. Brauer v. Compania, 61 Fed. 860; The Arctic Bird, 109 Fed. 167; Dufourcet v. Bishop, L. R. 18 Q. B. D. 373; Rodocanachi v. Milburn, L. R. 18 Q. B. D. 67.

1. Caze v. Balto. Ins. Co., 7 Cranch, 358; The Joseph Farwell, 31 Fed. 844; The Appam, 243 Fed. 230; China Mut. Ins. Co. v. Force, 142 N. Y. 90; The Ann D. Richardson, Abb. Adm. 499,

however, does not necessarily produce the loss of the freight also; the shipowner is entitled to transship the cargo upon another bottom and thus earn his freight[2] (and, indeed, American authorities hold that he is obliged to transship[3]). If the ship is not lost, but merely needs repair, or, if the cargo must be reconditioned, if this can be done in a reasonable time, the shipowner is entitled to carry the cargo on and earn his freight.[4] What is a reasonable time varies with the circumstances.[5] If the cargo owner

F. C. No. 410; The Nathaniel Hooper, 3 Sumner, 542, F. C. No. 10,032; The Velona, 3 Ware, 139, F. C. No. 16,912. This is true even though the transit is by several carriers; the freight cannot be separated, Merchants & Miners Trans. Co. v. Cotton, 216 Fed. 237; Mitsui v. St. Paul F. & M. Ins. Co., 202 Fed. 26, C. C. A.

2. Hugg v. Augusta Ins. Co., 7 How. 595, 604, 12 L. Ed. 834; The Velona, supra. In The Tornado, 108 U. S. 342, 27 L. Ed. 747, where a ship was destroyed by fire at the loading port, before she had broken ground, it was held that this entitled the cargo owner to redelivery of his goods without payment of freight. The owner has no right to transship except in case of necessity, Trott v. Wood, 1 Gall. 433, F. C. No. 14,190.

3. The Maggie Hammond, 9 Wall. 435, 19 L. Ed. 772; Harrison v. Fortlage, 161 U. S. 57, 40 L. Ed. 616; The Jason, 28 Fed. 323; The Strathdon, 89 Fed. 374 (where the shippers acquiesced in failure to transship); The Bohemia, 38 Fed. 756 (there is no duty to transship if the delay will not be prolonged).

4. The Nathaniel Hooper, supra; Wood v. Hubbard, 62 Fed. 753; The Eliza Lines, 61 Fed. 308, 325; Phelan v. The Alvarado, F. C. No. 11,067; Hubbell v. Gt. West Ins. Co., 74 N. Y. 246.

5. Herbert v. Hallett, 3 Johns. Cas. 93.

insists on receiving his cargo at an intermediate port he must pay full freight therefor.[6] There are, however, cases where the master by something in the nature of a new agreement delivers over the cargo, and it is in such circumstances that freight pro rata becomes due.[7] Exactly how freight pro rata is to be calculated has not been determined. Two theories have been suggested, one, the geographical, where the owner receives such a proportion of the contractual freight as the distance traversed bears to the entire voyage, and, second, where the freight is based upon the benefit to the cargo owner and the difficulties overcome by the ship.[8]

Where, by reason of sea perils, the ship is abandoned by master and crew, even though justifiably, and the cargo owners demand the return of their

6. The Nathaniel Hooper, supra; Hubbell v. G. W. Ins. Co., 74 N. Y. 246. See The Eliza Lines, 114 Fed. 307, 311, 102 Fed. 190, 191.

7. Barrell v. The Mohawk, 8 Wall. 153, 19 L. Ed. 406; British & F. Mar. Ins. Co. v. So. Pac. Co., 72 Fed. 285, C. C. A.; The Nathaniel Hooper, supra; Hubbell v. Gt. West Ins. Co., 74 N. Y. 246; Scow No. 190, 88 Fed. 320. Pro rata freight has been allowed where the rights of the parties were governed by foreign law, Nat'l Bd. of Underwriters v. Melchers, 45 Fed. 643, and under a stipulation in the bill of lading, Ralli v. New York, etc. S. S. Co., 154 Fed. 286, C. C. A.

8. See Barrell v. The Mohawk, supra; Parsons on Shipping, pp. 243.

cargo before repossession by the shipowner's representatives is gained, no freight is due.[9]

§ 31. Lump sum freight.

When the freight payable is a lump sum for the voyage, the charter is in effect a hiring of the ship, and full freight is due though some of the cargo is lost on the voyage.[1] The contract must clearly show that the freight is not to be paid on the amount of cargo delivered.[2] But a stipulation that freight is to be paid upon the weight intaken shows an agreement for a lump sum freight even though freight is not payable until right delivery;[3] and the same result is reached if the amount of cargo on which freight is to be paid is specifically stated in the contract.[4] If the cargo is damaged by a cause for which the

9. The Eliza Lines, 199 U. S. 119, 50 L. Ed. 115; The Kathleen, L. R. 4, A. & E. 269; The Cito, L. R. 7, P. D. 5; The Arno, 72 L. T. 121. Compare, Bradley v. Newsum, 34 T. L. R. 613 (House of Lords), where the rule was held not to apply, the crew being compelled to abandon the ship by a hostile sub-marine.

1. Christie v. Davis Coal & Coke Co., 95 Fed. 837, affd. 110 Fed. 1006.

2. Gibson v. Brown, 44 Fed. 98.

3. Christie v. Davis Co., supra; Harrison v. Bags of Sugar, 44 Fed. 686, affd. 53 Fed. 828.

4. The Querini Stamphalia, 19 Fed. 123; The Defiance, 6 Ben. 162, F. C. No. 3,740; Planters' Fertilizer Mfg. Co. v. Elder, 101 Fed. 1001, C. C. A.; The Frogner, 49 Fed. 876.

ship is responsible, this may be set off in an action for freight.[5]

§ 32. Dead freight.

When the freight is payable at a rate per unit, it is to the advantage of the shipowner to load as much cargo as possible, and the charter usually provides for the shipment of a full cargo by the charterer. In case a full cargo is not loaded, the amount of damages that the owner is entitled to receive is called "dead freight." If the master does not present a claim for dead freight before the vessel sails it will be very difficult to claim thereafter that more cargo should have been loaded.[1]

When the charterer pays a lump sum for the ship, it will be to the charterer's advantage that as large a cargo as possible be carried, and the owner may

5. The Tangier, 32 Fed. 230.

1. See Barber v. Vlasto, 104 Fed. 101; West Hartlepool Nav. Co. v. Vogemann, 134 Fed. 1008; The Drottning Sophia, 153 Fed. 1017; Eikrem v. New Eng. Coal Co., 125 Fed. 987. Where a schooner was chartered to carry a full cargo of kiln dried lumber, and the persons to whom the charterer consigned the vessel for loading, put on board wet lumber with the result that a full cargo was not taken, it was held that the owner could recover dead freight, the master not being under a duty to refuse to take the wet lumber, Hinckley v. Wilson, 205 Fed. 974.

then have to face a claim for not carrying a full cargo.[2]

If a full cargo is not carried because the stevedore fails to stow properly, the loss will ordinarily fall upon the owner because the stevedore is regarded as being the owner's servant.[3]

§ 33. Penalty clause.

This clause is a survival from ancient times. Originally a fixed sum was named as the penalty; more recently, however, the clause has been modified so as to read as follows: "penalty for non-performance proved damages not exceeding the estimated amount of freight." Whether in its ancient form, or as modernized, the clause is ineffective under English and American law either to allow the recovery of the penalty[1] in case the aggrieved party's damages are less, or to operate as a limit on recovery where the damages are greater.[2] Under some systems of law, however, the penalty is effective and enforcible.[3]

2. See The John A. Briggs, 120 Fed. 6, C. C. A.

3. Manchisa v. Card, 39 Fed. 492. See The Kaupanger, 241 Fed. 702.

1. Watts v. Camors, 115 U. S. 353, 29 L. Ed. 406.

2. Akties Korn-og Foderstof v. Rederi Atlanten, 250 Fed. 935, C. C. A.

3. See Godard v. Gray, L. R. 6, Q. B. 139, where the clause was enforced in a French court.

§ 34. Commissions.

A broker who negotiates a charter party is entitled to his commission when the charter party is signed. It is immaterial (in the absence of a contract to the contrary) that no freight is earned by reason of a cause for which the broker is not responsible; there is no different rule with regard to a charter party broker than that which applies to a broker in real estate.[1] Where a broker negotiated a time charter for a period of over four years, which provided for a commission "upon the gross amount of this charter, payable upon the signing hereof, steamship lost or not lost," and the charter was put an end to by the outbreak of war, it was held that the broker was entitled to a commission on the hire which would have been earned had the charter continued; a custom that brokers only collected their commissions out of hire paid was inadmissible.[2] So where a charter provided for a commission on the estimated gross freight "on the completion of loading, or should vessel be lost," and the vessel was lost before the loading, it was held that a commission was nevertheless due.[3] Where the charter provides

1. Vellore S. S. Co. v. Steengrafe, 229 Fed. 394, C. C. A.; Walford v. Affreteurs Reunis, 23 Com. Cas. 461, affd. by the House of Lords, 24 Com. Cas. 268.

2. Vellore v. Steengrafe, supra.

3. Portland Flouring Mills v. Weir, 95 Fed. 997.

for a commission on the sale of the vessel chartered, and the vessel is lost, this is not a "sale" within the meaning of the charter and the broker is not entitled to a commission on the insurance money.[4]

Under rate charters, questions arise as to whether the broker is entitled to a commission merely on the freight or whether he is also entitled to commissions on dead freight and demurrage. When the charter provided for a commission "on shipment of cargo," it was held that the broker was not entitled to a commission on demurrage collected at the port of discharge;[5] otherwise when the commission was payable on "freight, dead freight and demurrage," even though made payable on signing the charter, when demurrage at the port of discharge would not be due.[5] The broker was also allowed a commission on demurrage collected at the port of discharge where the charter provided for a commission "on the gross amount of this charter" payable on signing.[6]

The Admiralty Court has no jurisdiction of a suit by a broker for commissions; such actions must be brought at common law.[7]

4. Holmes v. Montauk Co., 93 Fed. 731, C. C. A.
5. Moor Line v. Dreyfus, 23 Com. Cas. 80.
6. Brown v. Yeats, 48 Fed. 115.
7. Rhederi v. Clutha, 226 Fed. 339.

CHAPTER III.

DEMURRAGE

Section 35. When is a ship an "arrived" ship?
36. Or so near thereunto as she may safely get.
37. Provisions expressly fixing time when lay-days are to begin.
38. Notice of readiness.
39. Lay-days.
40. Running days, working days, holidays, etc.
41. Effect of working on excepted days.
42. Fault of the master or owner.
43. Stevedores.
44. Exception clauses.
45. Whether the exception clause protects the charterer.
46. Must the actual loading or discharge be prevented?
47. Efforts to be made by charterer to overcome operation of an excepted cause.
48. Specific exceptions. Strikes.
49. Effect of expiration of lay-days.
50. Default.
51. Effect of charter without fixed time.
52. Customary despatch.
53. Quick despatch; as fast as steamer can deliver.
54. Continuously.
55. Turn berth clauses.
56. Obligation on charterer to have his cargo ready.
57. Dispatch money.
58. Demurrage through exercise of lien.

When is a ship an "arrived" ship?

The subject of demurrage is a perplexed one. No two charters are entirely alike, and there is much conflict in the decisions. There are, however, certain leading principles which serve as a guide.

The subject conveniently divides itself into two parts (a) where the time for loading or discharging is definitely fixed and (b) where there is either no provision at all or a provision for "customary dispatch," "quick dispatch," etc.

WHEN THERE IS A FIXED TIME.

§ 35. When is a ship an "arrived" ship?

The rule is now settled in England that a ship may be regarded as "arrived" so as to commence the running of the lay-days when she is ready to load or discharge (as the case may be) has given notice (if notice is required), and has reached the terminus fixed in her charter party. This terminus may be either a port or it may be a dock, or berth. In all instances the terminus must be reached before the lay-days commence. A variation of the above occurs when the charter party provides that the ship shall go to a berth "as ordered." This resembles a charter party where the berth is named with the exception that it allows the selection of a berth by the charterer to suit his business needs. In other words, the charterer may order the ship to an occupied berth, and the lay-days will not begin until the

ship gets alongside. For a statement of these rules see Leonis S. S. Co. v. Rank.[1]

It has been doubted if the English rule is the law in the United States.[2] However, there are many authorities which are in accord with the English rule. For instance under a charter providing that the lay-days should commence "from the time the captain reports his vessel ready to discharge in New York harbor," the lay-days began when the vessel was in New York harbor and before she reached her berth.[3] When the berth is named in the charter, the berth must be actually reached before the lay-days begin.[4] If the charter provides for loading and discharge at a berth "as ordered," there are cases also following the English rule.[5] If, however, no berth is named within a reasonable time, the lay-days begin at once.[6] If there is no express provision that the vessel shall go to a berth "as ordered," this is, nevertheless, implied under the charter party, but

1. L. R. 1908, 1 K. B. 499, 13 Com. Cas. 136; Armament v. Robinson, 14 Asp. M. C. 84.

2. S. S. Rutherglen v. Howard Houlder, 203 Fed. 848, C. C. A.

3. The E. T. Stotesbury, 187 Fed. 111, C. C. A. See The Dictator, 30 Fed. 637; Constantine & Pick. v. Auchincloss, 161 Fed. 843, C. C. A.

4. Tweedie v. Barry, 205 Fed. 721, C. C. A.

5. Anderson v. Moore, 179 Fed. 68, C. C. A., but see Williams v. Theobald, 15 Fed. 465; Smith v. N. Y., etc. Co., 56 Fed. 527; Lindsay v. Cusimano, 12 Fed. 504.

6. Dewar v. Mowinckel, 179 Fed. 355, C. C. A.

the lay-days will begin although the ship may have to wait for a berth.[7]

§ 36. Or so near thereunto as she may safely get.

There is usually this qualification of the place of delivery in the charter. The effect of the clause, so far as relates to demurrage, is to allow the ship to proceed to an alternative destination, in case it will be impossible for her to reach the primary destination within a reasonable time, having in view all of the purposes of the voyage; the alternative destination must, however, be within the ambit of the port.[1] In the English case cited it was held that a delay of five weeks in getting into a dock was so unreasonable as to allow the owner to require the charterer to take delivery in lighters. This case has been followed in the United States upon somewhat similar facts.[2]

§ 37. Provisions expressly fixing time when lay-days are to begin.

Sometimes the time when the lay-days are to begin is expressly fixed. When the charter party provided that the lay-days should be "commencing

7. Leonis S. S. Co. v. Rank, L. R. (1908), 1K. B. 499, 13 Com. Cas. 136.

1. Dahl v. Nelson, L. R. 6, A. C. 38, 4 Asp. M. C. 392.

2. Williams v. Theobald, 15 Fed. 465; Carsanego v. Wheeler, 16 Fed. 248.

Provisions expressly fixing time when lay-days are to begin.

from the time the captain reports his vessel ready to discharge in New York harbor," the lay-days began while the ship was in the harbor and before she had reached her dock.[1] Where the charter provided "lay-days not to commence to count until 12 noon after steamer is entered in the custom house and in every respect ready to load" the lay-days began at noon after the steamer had been entered although she was not in a berth.[2] So when the charter provides for the beginning of the lay-days, "whether in berth or not" this puts the risk of obtaining a berth upon the charterer.[3] When the charter provided that the lay-days should be "commencing from the time the captain reports himself ready to receive or discharge," this made the vessel an arrived ship although she could not get a berth at the wharf to which she was ordered.[4] When a ship is entitled to "commence discharging immediately upon her arrival," her arrival dates from the time she actually secures a berth.[5] A vessel is not "all ready to discharge" until she has secured a berth.[6]

1. The E. T. Stotesbury, 187 Fed. 111, C. C. A.

2. Carbon Slate Co. v. Ennis, 114 Fed. 260, C. C. A.

3. W. K. Niver Coal Co. v. Cheronea S. S. Co., 142 Fed. 402, C. C. A.

4. Wasson v. Stetson, 214 Fed. 329. Otherwise when the wharves were public, and the harbor-master made the ship wait her turn, Flood v. Crowell, 92 Fed. 402, C. C. A.

5. Tweedie v. Pitch Pine Lumber Co., 156 Fed. 88.

6. The St. Bernard, 105 Fed. 994.

§ 38. Notice of readiness.

As a general rule, in order to begin the running of the lay-days, notice of readiness must be given.[1] The ship must be actually ready when notice is given, and a notice is useless if this is not the case. For instance if she is required by her charter to reach a berth, a notice given when she is in the stream will be disregarded.[2] A provision as to notice is waived when there is actual notice and work is begun.[3] A notice on a holiday is probably not good,[4] and when the charter provides for one clear day after notice before lay-days begin, a holiday is not such a day.[5] The notice must reach the charterer.[6] Even though the charter provides for notice, if there is no one to receive it, notice is not necessary.[7]

The ship must also be physically ready to load or discharge cargo. If at the loading port she must be able to receive cargo in all her holds.[8] She must

1. Tweedie v. Pitch Pine Lumber Co., 156 Fed. 88; The Rocky City, 33 Fed. 556.
2. The St. Bernard, 105 Fed. 994; Addicks v. Kainit, 23 Fed. 727.
3. Wash. Co. v. Rainier Co., 198 Fed. 142.
4. Perry v. Spreckles, 110 Fed. 777; The Unionist, 48 Fed. 315.
5. The Assyria, 98 Fed. 316, C. C. A.
6. The India, 49 Fed. 76, C. C. A.
7. Hatton v. De Belaunzaran, 26 Fed. 780.
8. Crow v. Myers, 41 Fed. 806.

have her tackle rigged to handle cargo,[9] but this is not required if the place where the lay-days are to begin is such that it could not be expected that loading or discharging would be done there.[10] The ship must also be legally able to communicate with the shore; she is not ready if prevented by revenue laws[11] or quarantine.[12]

§ 39. Lay-days.

Charter parties are like other contracts and the charterer is not ordinarily excused from his obligation that the vessel shall be loaded or discharged in the lay-days by impossibility; the only two implied exceptions well recognized in law are when the impossibility is due to the destruction of the subject-matter or to domestic law. In Empire Trans. Co. v. Phila. and Reading Coal & Iron Co.,[1] the court said:

> "Where the time for the discharge of the vessel is stipulated, or is definitely fixed by the charter or bill of lading, so that it can be calculated beforehand, the charterer thereby agrees absolutely to discharge her within that time, and he takes the risk of all unforseen circumstances. 'He

9. Brooks v. Hilton Lbr. Co., 229 Fed. 708, C. C. A.

10. Armament Adolf Dieppe v. Robinson, 22 Com. Cas. 300, 14 Asp. M. C. 84, where the lay-days were to begin on arrival at the buoys.

11. Pierson v. Ogden, F. C. No. 11,160. See Bonanno v. Tweedie, 117 Fed. 991, affd. 130 Fed. 448.

12. White v. Winchester S. S. Co., 23 Sc. L. R. 342.

1. 77 Fed. 919, C. C. A. See also Huron Bge. Co. v. Turney, 71 Fed. 972.

bears the risk of delay arising from the crowded state of the place at which the ship is to load or discharge (Randall v. Lynch, 2 Camp. 352); or from frost (Barret v. Dutton, 4 Camp. 333); or bad weather (Thiis v. Byers, 1 Q. B. Div. 244), preventing access to the vessel; or from acts of the government of the place prohibiting export, or preventing communication with the ship. Barker v. Hodgson, 3 Maule & S. 267; Bright v. Page, 3 Bos. & P. 295, note. And it is immaterial that the shipowner, also, is prevented from doing his part of the work within the agreed time, unless he is in fault. The charterer takes the risk.' "

The charterer is relieved from his obligation if the delay results from the fault of the owner or master (see infra, sec. 42) or if he is protected by an express exception in the charter (see infra, secs. 44 to 48).

In some charters the number of lay-days is definitely stated, in others it is provided that so many tons shall be loaded a day. The latter provision makes the charter no less one in which the lay-days are fixed.[2]

And it is probably true that the charterer's protection is broader than would appear from some of the authorities. For instance, if the ship were run into while loading, and had to leave for repairs, it would hardly be contended that this did not stop the running of the lay-days, until the repairs were completed, although the collision was not due to the owner's fault.[3]

2. Williams v. Theobald, 15 Fed. 465.

3. See Tyne Co. v. Leach, L. R. (1900), 2 Q. B. 12, 5 Com. Cas. 155.

§ 40. Running days, working days, holidays, etc.

"Running days" mean the days when the ship would be running, that is, they run continuously, holidays are not excepted.[1] On the other hand, "working days" mean only days on which work is customarily done,[2] holidays are excluded. "Days" are treated like "running days."[3] Sometimes the phrase used is "weather working days," which is "a day otherwise a working day when the weather would reasonably permit the carrying on of the work contemplated."[4]

In Nome, Alaska, there is a weather working day of 24 hours.[5] When "rainy days" are excepted, this does not mean every day in which rain falls, but days when the rain might reasonably be deemed to interfere with the loading or discharging.[6]

When Sundays only are excepted, holidays are not excluded.[7] A holiday need not have legal sanc-

1. Hagerman v. Norton, 105 Fed. 996, C. C. A.; Hughes v. Hoskins, 136 Fed. 435, C. C. A.; Sorensen v. Keyser, 52 Fed. 163, C. C. A.; The India, 49 Fed. 76, C. C. A.

2. Davis v. Pendergast, 16 Blatch, 565, F. C. No. 3647; Tweedie v. Pitch Pine Lumber Co., 156 Fed. 88.

3. Hughes v. Hoskins, 136 Fed. 435, C. C. A., but see Wallace v. Cargo of Lumber, 224 Fed. 993.

4. The India, 49 Fed. 76, C. C. A.; Pyman v. 100 Tons Kainit, 164 Fed. 364.

5. Weir v. Northwestern Comm. Co., 134 Fed. 991.

6. Balfour v. Wilkins, 5 Sawy. 429, F. C. No. 807.

7. James v. Brophy, 71 Fed. 310.

tion; it is enough if it is generally observed, for instance the Welsh Eisteddfod.[8] On the other hand, a day may be made a holiday by statute for business purposes, as when bank holidays are established during a panic, but this is not a "holiday" in the sense used in a charter party as it does not affect the loading or unloading of ships.[9] An exception of "holidays" includes a half-holiday,[10] but the fact that Saturday afternoon is frequently a legal half-holiday for business purposes, does not make it such within the meaning of a charter.[11]

§ 41. Effect of working on excepted days.

It was at one time held in England that if work was done on an excepted day this showed an agreement to treat such day as a lay-day. These decisions have now been overruled by the House of Lords.[1] The mere fact that work is done on an excepted day does not make that day a lay-day. The same rule seems to apply in the United States, although the cases have arisen with regard to

8. Tweedie v. Pitch Pine Lbr. Co., 156 Fed. 88.

9. Kerr v. Schwaner, 177 Fed. 659, C. C. A.

10. Holman v. Gans Line, 186 Fed. 96, C. C. A. (Saturday afternoon in Louisiana.)

11. Uren v. Hagar, 95 Fed. 493, Penna. See Holman v. Gans Line, supra.

1. Nelson v. Nelson, L. R. 1908, A. C. 108.

dispatch money.[2] On the other hand, if the lay-days are not clearly defined, the fact that work is done on a certain day may be evidence that the parties considered it a lay-day.[3] The master is probably under no obligation to allow loading on an excepted day.[4]

§ 42. Fault of the master or owner.

The lay-days do not run if the loading or discharge is due to the fault of the owner or his agents including the master. This fault may take a number of forms, for instance, a refusal to go to a proper dock,[1] refusal to sign a bill of lading,[2] dispute in which the master was in the wrong as to the amount of cargo,[3] failure to agree with the charterer as to a stevedore,[4] absence of the master delaying the load- or discharge.[5]

On the other hand, ordinary marine incidents such as delay in the loading do not prevent the lay-days

2. Elder Dempster v. Earn Line, 168 Fed. 50, C. C. A.; Earn Line v. Ennis, 157 Fed. 941, affd. 165 Fed. 633. See Holman v. Gans Line, 186 Fed. 96, C. C. A.

3. The Cyprus, 20 Fed. 144.

4. Creighton v. Dilks, 49 Fed. 107.

1. 2000 Tons of Coal ex Michigan, 135 Fed. 734, C. C. A.

2. The Assyria, 98 Fed. 316, C. C. A.; Hansen v. Amer. Tra. Co., 208 Fed. 884, C. C. A.

3. Sewall v. Wood, 135 Fed. 12, C. C. A.

4. Portland Spg. Co. v. Gibson, 44 Fed. 371.

5. Whitman v. Vanderbilt, 75 Fed. 422.

running, for instance, if the vessel has to take in stiffening[6] or if she has to shift her anchor.[7]

Delay due to the absence or inattention of custom house officers ordinarily does not extend the lay-days.[8] The charterer must furnish the necessary papers to enable the ship to get her clearance,[9] and if mistakes made by the charterers result in the detention of the vessel, they are liable.[10]

The vessel must be seaworthy,[11] and the lay-days are extended if the vessel's winches are not in proper condition.[12]

Delay on the part of the ship does not give the charterer a right to damages, but merely extends the lay-days.[13]

§ 43. Stevedores.

Ordinarily the stevedores are to be regarded as in the employ of the ship.[1] This is a survival from the days when the loading and unloading was done by

6. Houlder v. Weir, 10 Com. Cas. 228.
7. 393 Tons Guano, 6 Ben. 533, F. C. No. 14,011.
8. Carsanego v. Wheeler, 16 Fed. 248; The Nether Holme, 50 Fed. 434, C. C. A.; Bailey v. Mfrs. Lbr. Co., 224 Fed. 806.
9. Rumball v. Puig, 34 Fed. 665.
10. Snow v. 350 Tons Mahogany, 46 Fed. 129.
11. Gould v. Graffin, 62 Fed. 605.
12. Wash. Co. v. Rainier Co., 198 Fed. 142.
13. Milburn v. Fed. Sugar Refining Co., 161 Fed. 717, C. C. A.
1. Holman v. Gans Line, 186 Fed. 96, C. C. A.

the crew. Under modern conditions, the stevedores are independent contractors, that is, the stevedoring force is in the employ of a master stevedore who contracts with the shipowner to load or discharge.[2] Under English law, the rule seems settled that delay caused by inability to get stevedores (in consequence of a strike, for example) or delay caused by the failure of the stevedores to load or discharge diligently, do not extend the lay-days;[3] the charterer is regarded as having promised the owners that the stevedores will discharge within the time specified. The owner must, however, use reasonable efforts to furnish stevedores, and to speed their work.

Many American cases follow the English authorities.[4] There are, however, other American authorities which apparently hold that as the stevedores are to be regarded as employed by the ship, default on their part extends the lay-days, whether the delay is caused by a total failure to work[5] or merely a

2. See Munson v. Glasgow Nav. Co., 235 Fed. 64, C. C. A.; Murray v. Currie, L. R. 6, C. P. 24.

3. Budgett v. Binnington, L. R. (1891), 1 Q. B. 35, 6 Asp. M. C. 592; Alexander v. Akties Hansa, 35 Times, L. R. 709 (House of Lords); Jenneson v. Secretary of State, 14 Asp. M. C. 41.

4. Bailey v. Mfrs. Lbr. Co., 224 Fed. 806; Hagerman v. Norton, 105 Fed. 996, C. C. A.; Leary v. Talbot, 160 Fed. 914, C. C. A.

5. Harrington v. Am. Tie & Timber Co., 185 Fed. 475, C. C. A.

failure to load or discharge diligently when the charterer has done his part.[6] It makes no difference that the charterer has the privilege of appointing, and does appoint, the stevedore, he is still regarded as being employed by the owner.[7]

§ 44. Exception clauses.

Almost all charters which provide for loading or unloading in a fixed time contain an exception clause. Common exceptions are strikes, fire, restraint of princes, etc., the clause generally ending "and all other accidents beyond control," etc. Sometimes instead of specific exceptions the charterer is required to pay demurrage only in case of his "default." Before discussing specific exceptions it will be necessary to consider (a) whether the exception clause is so drawn as to apply to the charterer's undertakings as well as to those of the shipowner; (b) the scope of the rule that exception clauses only protect the charterer from inability to load or discharge, and (c) what efforts the charterer must make to overcome the operation of an excepted cause.

6. Standard Fuel Supply Co. v. Gray, 183 Fed. 513, C. C. A.; West Hart. Nav. Co. v. Kainit, 164 Fed. 836, C. C. A.; 2000 Tons Coal ex Michigan, 135 Fed. 734, C. C. A.; Dantzler v. Churchill, 136 Fed. 560, C. C. A.; Brooks v. Hilton, 229 Fed. 708, C. C. A.

7. Harrington v. Amer. Tie & Timber Co., 185 Fed. 475, C. C. A.

§ 45. Whether the exception clause protects the charterer.

The older authorities held strictly that the exception clause was solely for the owner's benefit and not for the charterer's. More recently, however, it has been held that the charterer is also entitled to the benefit of the clause, particularly if some of the exceptions are more naturally applicable to the charterer's undertaking than to those of the owner, for instance, "fire on land."[1] If the charter provides that the perils are to be "mutually excepted," this clearly includes the charterer.

§ 46. Must the actual loading or discharge be prevented?

It is an implied promise on the part of the charterer that he will have his cargo ready at the loading port. It is no concern of the shipowner how the charterer is to get it there. Therefore, unless expressly provided otherwise, the exceptions will protect the charterer only in the actual operation of loading and discharging and not in procuring the cargo or bringing it to the loading port. For example in Sorensen v. Keyser,[1a] the action was brought to recover demurrage incurred in loading a steamer

1. See Barrie v. Peruv. Corp., 2 Com. Cas. 50; Embiricos v. Reid, 19 Com. Cas. 263.

1a. 52 Fed. 163; The India, 49 Fed. 76, C. C. A.; 1600 Tons Nitrate v. McLeod, 61 Fed. 849, C. C. A.; Jonasen v. Keyser, 112 Fed. 443, C. C. A.

with a cargo of timber at Ship Island. The practice there is for the timber to be brought down from the interior in rafts and stored at Moss Point before being loaded. Owing to a drought, it was impossible to bring down the timber promptly and, droughts being excepted in the charter, the charterer refused to pay demurrage. As, however, the drought would not have prevented loading, if the cargo had been ready, the charterer was held liable.[2] On the other hand, where the cargo specified in the charter is never kept on storage at the loading port, the transit from the usual place of storage, as, for instance, a mine, may be considered as part of the loading[3] and the exceptions will apply to this also. The parties may also provide that the exceptions shall have a wider scope and protect the charterer even in bringing his cargo to the loading port.[4]

§ 47. Efforts to be made by charterer to overcome operation of an excepted cause.

The extent of the efforts to be made by the charterer has not yet been accurately defined. The charterer need not do something entirely unreason-

2. See Coverdale v. Grant, L. R. 9, A. C. 470; Schr. Mahukona Co. v. Lumber, 142 Fed. 578.

3. 1100 Tons of Coal, 12 Fed. 185. See Hudson v. Ede, L. R. 3, Q. B. 412; Randall v. Sprague, 74 Fed. 247, C. C. A.; Donnell v. Amoskeag Co., 118 Fed. 10, C. C. A.

4. Furness v. Forwood, 2 Com. Cas. 223; Richardson v. Samuel (1898), 1 Q. B. 261.

Charterer's duty to overcome operation of an excepted cause.

able; if he has several ships under charter, all delayed by the same excepted cause, it is enough if he treats them equally; each ship cannot claim that the charterer's entire facilities should be devoted to it.[1] There must be prevention, a mere increase in expense will not do.[2] On the other hand, the prevention need only be commercial in its nature; for instance, when a channel down which salt was ordinarily sent to the loading port was blocked, the charterer was not under obligation to send the salt by railroad since this was so expensive as to be commercially preposterous.[3] The exception of "strikes" is in a category by itself. A strike is almost always a matter of money, and can be put an end to by a money payment. Consequently if the charterer was obliged to end the strike by making some pecuniary sacrifice, this would have the effect of erasing the exception from the charter party. The courts, therefore, hold that the charterer is not obliged to offer increased wages to avoid a strike, and that a strike is a defense, even though caused by some new rule made by the charterer, provided the rule is reasonable under the circumstances.[4]

1. Crawford v. Wilson, 1 Com. Cas. 277.

2. The Themis, 244 Fed. 545; Assoc. Portland Cement Mfrs. v. Cory, 31 Times, L. R. 442.

3. Allerton S. S. Co. v. Falk, 6 Asp. M. C. 287. See Aalholm v. Iron Ore, 23 Fed. 620.

4. Hawkhurst v. Keyser, 84 Fed. 693, C. C. A.; The Toronto, 174 Fed. 632, C. C. A. See The Themis, supra.

§ 48. Specific exceptions.

Strikes. The exception must operate directly. Thus where a strike of coal miners in Pennsylvania made it necessary to import coal to Boston from England, resulting in a blockade of the Boston wharves, the charterer was not protected from the resultant delay by the exception.[1] The charterer is not released from his obligation to load by the fact that the vessel's engineers have struck.[2] The fact that laborers refuse to work because of the fear of plague does not constitute a strike.[3] The mere fact that the workmen refuse to work does not constitute a "strike."[4]

Frost. This includes ice delaying the discharge into lighters.[5]

Bad weather. Weather not reasonably fit for loading or discharging.[6]

1. W. K. Niver Coal Co. v. Cheronea S. S. Co., 142 Fed. 402, C. C. A.

2. Ropner v. Ronnebeck, 20 Com. Cas. 95.

3. Stephens v. Harris, 6 Asp. M. C. 192; Mudie v. Strick, 14 Com. Cas. 135.

4. Hagerman v. Norton, 105 Fed. 996, C. C. A. It has been said that a strike is "a general concerted refusal by workmen to work in consequence of an alleged grievance." Williams v. Naamlooze, 21 Com. Cas. 253, 257, holding that the exception applied when sailors refused to sail because of fear of submarines.

5. Aalholm v. Iron Ore, 23 Fed. 620.

6. The Ocean Prince, 50 Fed. 115.

Intervention of Constituted Authorities. Covers the refusal of a port authority to allow a vessel to occupy a berth,[7] but would not excuse a delay in furnishing the cargo.[8]

Any other accidents or causes beyond the control of the charterer. The exception clause is commonly ended with some such words. The chief controversy is as to whether they are to be construed in connection with what precedes, that is as merely intended to broaden the previously enumerated exceptions, or as introducing an exception of a kind not already specified. It has been held that where the exceptions are all of one class, no new genus is to be introduced. For instance where the exception clause was "strikes, lockouts, civil commotions," the general clause at the end did not include the plague.[9] On the other hand, when riots, fire, frosts, floods, storms, strikes, lockouts, etc., were excepted, it was held that this covered an independent category of causes not subject to the doctrine of eiusdem generis, and excused delay in discharging, owing to inability to obtain a berth.[10] It has been stated that the use of the word "whatsoever" (for instance, "and all other accidents whatsoever beyond the

7. Adamson v. 4300 Tons Pyrites, 137 Fed. 998.

8. 1600 Tons Nitrate v. McLeod, 61 Fed. 849, C. C. A.

9. Mudie v. Strick, 14 Com. Cas. 135.

10. S. S. Rutherglen v. Howard Houlder, 203 Fed. 848, C. C. A., but see Thorman v. Dowgate S. S. Co., 15 Com. Cas. 67.

charterer's control") shows an intent to exclude the eiusdem generis doctrine.[11]

When the delay is caused by the charterers themselves ordering too many vessels, this cannot be said to be beyond the charterer's control.[12]

When there was an exception of "strikes or any other accidents or causes beyond the control of the charterer," this covered a refusal of the owner of the coal dock at which the ship was directed to load to allow her to berth.[13]

§ 49. Effect of expiration of lay-days.

Once the lay-days have expired, and the ship is on demurrage, the demurrage days run continuously. The exception of Sundays, holidays, strikes, etc., is no longer of any value.[1] This is for the reason that the charterer is considered as having failed in his duty by not having loaded the ship in the lay-days. Demurrage is payable day by day.[2]

11. Larsen v. Sylvester, L. R. 1908, A. C. 295, 13 Com. Cas. 328; France v. Spackman, 18 Com. Cas. 52.

12. W. K. Niver Coal Co. v. Cheronea S. S. Co., 142 Fed. 402.

13. Pyman v. Mex. Cent. Ry. Co., 169 Fed. 281, C. C. A.

1. Wash. Co. v. Rainier Mill Co., 198 Fed. 142; Leh. Val. Coal Co. v. Ionia Trans. Co., 174 Fed. 798; Ulster Brick Co. v. Murtha, 169 App. Div. 151; The Oluf, 19 Fed. 459; Lindsay v. Cusimano, 12 Fed. 504.

2. Milburn v. 35000 Boxes Oranges, 57 Fed. 236; The Hyperion's Cargo, 2 Lowell, 93, F. C. No. 6987; Davis v. Smokeless Fuel Co., 196 Fed. 753, C. C. A.

Sometimes the charter provides for only a certain number of demurrage days and for detention beyond this time the owner's damages are unliquidated; but this is unusual.[3] If the charter is cancelled before sailing, either by mutual consent or under a stipulation therein contained, it has been held that the owner is not entitled even to demurrage that has accrued.[4]

If the demurrage rate is stipulated in the charter party, the owner will be entitled to receive it unless grossly disproportioned to the value of the vessel.[5] In case no amount is stipulated, the owner will be allowed recovery at the market rate, if there is one; if not, at the rate of the net earnings under the charter deducting any charges saved, as, for instance, coal, and crediting the owner with any extra expenses, if they are incurred.[6]

§ 50. Default.

It is frequently provided in charters that demurrage is payable in case of "default." In Crossman v. Burrill,[1] the leading authority, it was held that where discharge of a bark was delayed in a South

3. See Jonasen v. Keyser, 112 Fed. 443, C. C. A.

4. Morgan v. Garfield & Proctor Coal Co., 113 Fed. 520.

5. Bailey v. Mfrs. Lbr. Co., 224 Fed. 806; N. Y. & N. E. R. Co. v. Church, 58 Fed. 600.

6. Tweedie v. Strong, 195 Fed. 929, C. C. A.

1. 179 U. S. 100, 45 L. Ed. 106, see 130 Fed. 763.

American port by a revolution which, through the firing of cannon, directly impeded the discharging, this was not by the "default" of the charterer. This case settled there was no "default" when a vis major directly prevented discharging (or loading). Exactly what constitutes vis major has not been defined. Bad weather is not enough;[2] nor is a crowded state of the docks;[3] nor is a political disturbance interfering with the procuring of a cargo, but not with the loading.[4] But a detention at quarantine by order of a foreign government is not by the charterer's default.[5]

WHEN THE TIME FOR LOADING OR DISCHARGING IS NOT FIXED.

§ 51. Effect of charter without fixed time.

Frequently instead of fixing a set time within which the loading or discharge must be completed, there is either no provision at all or else there is merely the requirement of "customary despatch,"

2. Hughes v. Hoskins Lbr. Co., 136 Fed. 435, C. C. A.; Booye v. Cargo of Boards, 42 Fed. 335; Southern Trans. v. Unkel, 236 Fed. 779.

3. Davis v. Wallace, 3 Cliff. 123, F. C. No. 3657; Davis v. Pendergast, 16 Blatch. 565, F. C. No. 3647; Thacher v. Boston Gas Co., 2 Lowell, 361, F. C. No. 13,850.

4. Sixteen Hundred Tons of Nitrate of Soda v. McLeod, 61 Fed. 849, C. C. A.

5. Towle v. Kettell, 5 Cush. (Mass.) 18.

"quick despatch" or other more or less equivalent term. The same charter may have fixed lay-days for loading, while the period for discharging is at large or vice versa.

Where there is no stipulation as to the time of the loading or discharge. The rule under such circumstances is well stated in the case of Empire Transportation Co. v. Philadelphia & R. C. & I. Co.,[1] as follows:

> "1. Where the charter of a ship is silent as to the time of unloading and discharging, there is no implied agreement that the charterer will unload or discharge her in the customary time at the port of delivery, regardless of all extraordinary circumstances and unforeseen obstacles.
>
> 2. The implied contract is to unload and discharge her in such time as is reasonable, in view of all the existing facts and circumstances, ordinary and extraordinary, legitimately bearing upon that question at the time of her arrival and discharge.
>
> 3. This implied contract to discharge the vessel in a reasonable time is, in effect, a contract to discharge her with reasonable diligence.
>
> 4. The burden is on him who seeks to recover damages for the delay of a vessel, under such a contract, to prove that the charterer did not exercise reasonable diligence to

1. 77 Fed. 919, C. C. A. at pp. 925, 926; Randall v. Sprague, 74 Fed. 247, C. C. A.; Marshall v. McNear, 121 Fed. 428; Finney v. Grand Trunk, 14 Fed. 171; The J. E. Owen, 54 Fed. 185; Bellatty v. Curtis, 41 Fed. 479; The Ionia, 135 Fed. 317, C. C. A.; Fish v. 150 Tons Brown Stone, 20 Fed. 201; The Abenaki, 214 Fed. 325.

discharge her, under the actual circumstances of the particular case.

5. Proof that the vessel was delayed in unloading beyond the customary time for unloading such cargoes at the port of her delivery throws upon the charterer the burden of excusing the delay by proof of the actual circumstances of the delivery and his reasonable diligence thereunder."

When the charterer consigns the ship to another for loading or discharging, he becomes responsible for the acts or omissions of the consignee.[2]

§ 52. Customary despatch.

There seems to be no great difference between a charter stipulating for "customary despatch," and one where the time for loading or discharging is left entirely blank. Even when time is not mentioned there is still an obligation to use due diligence, which is equivalent to an obligation to give customary despatch. "Customary despatch" does not usually bind the charterer to any greater obligation than this.[1] In New York, in certain trades at least, custom imports an obligation on the charterer to furnish a berth within twenty-four hours after the ship's arrival.[2] It means the usual dispatch of per-

2. Donnell v. Amoskeag Co., 118 Fed. 10, C. C. A.

1. Gilbert Trans. Co. v. Borden, 170 Fed. 706, C. C. A. (wait for berth); The Viola, 90 Fed. 750 (wait for berth); The Spartan, 25 Fed. 44; The James Baird, 90 Fed. 669.

2. Crowley v. Hurd, 172 Fed. 498; Leary v. Talbot, 160 Fed. 914, C. C. A.; Swan v. Wiley, 161 Fed. 905, C. C. A.; Smith v. 6000 Ft. Lbr., 2 Fed. 396.

sons who are ready to receive a cargo,[3] and does not include a custom relative to the sale of the cargo which would delay the discharge.[4] In Wasson v. Stetson,[5] it was held that such a provision was not intended to affect the obligation to secure a berth but merely to "affect the rights of the parties after the discharge begins."[5] Some charters incorporate the Produce Exchange Rules (New York), but these rules have apparently not become the custom of the port of New York.[6]

§ 53. Quick despatch. As fast as steamer can deliver. As fast as possible, etc.

It has been held in England that these and similar terms have the same meaning; no absolute obligation is imposed; it is the duty of the consignee merely to do his best, taking into consideration the surrounding circumstances.[1] In the United States, it is held that these or similar clauses require that a ready

3. Lindsay v. Cusimano, 10 Fed. 302, 12 Fed. 504. See Hinckley v. Wilson Lbr. Co., 205 Fed. 974.

4. Milburn v. 35000 Boxes Oranges, 57 Fed. 236.

5. 214 Fed. 329 at 332. See Holman v. Gans, 186 Fed. 96, C. C. A.

6. See generally, Randolph v. Wiley, 118 Fed. 77; Gilb. Trans. Co. v. Borden, 170 Fed. 706, C. C. A.; Smith v. Rob. R. Sizer, 134 Fed. 928; The Corfe Castle, 221 Fed. 98; Gill v. Browne, The Harbinger, 53 Fed. 394.

1. Hulthen v. Stewart, L. R. 1903, A. C. 389. See S. S. Rutherglen v. Howard Houlder, 203 Fed. 848, C. C. A.

berth be furnished and exclude a custom that a vessel shall await its turn.[2]

They require the use of all means readily available.[3] The ship is entitled to use all her hatches[4] unless the kind and weight of the cargo makes this inconvenient.[5] The charterer must have his cargo ready.[6] When the bill of lading issued for cargo stowed at the bottom of the hold provides that the cargo is to be received, "as fast as the steamer can unload, working all hatches," this does not make the holder liable for delay due to the faults of the owners of the superimposed cargo.[7]

§ 54. Continuously.

It is sometimes provided in bills of lading that the ship shall discharge "continuously." It has been

2. Keen v. Andenreid, 5 Ben. 535, F. C. No. 7639; Sleeper v. Puig, 17 Blatch. 36; Moody v. 500,000 Laths, 2 Fed. 607; Bjorkquist v. Certain Steel Rail Crop Ends, 3 Fed. 717; Mott v. Frost, 47 Fed. 82; 10,082 Oak Ties, 87 Fed. 935, but in The J. W. Brooks, 122 Fed. 881, it was held that the term was open to explanation.

3. Egan v. Barclay Fibre Co., 61 Fed. 527; Smith v. Roberts, 67 Fed. 361, C. C. A.; Harrison v. Smith, 67 Fed. 354, C. C. A.

4. Hine v. Perkins, 55 Fed. 996, C. C. A. See The Glenfinlas, 48 Fed. 758, C. C. A.

5. Uren v. Hagar, 95 Fed. 493.

6. Atl. S. S. Co. v. Guggenheim, 147 Fed. 103, C. C. A. See Durchman v. Dunn, 101 Fed. 606.

7. Tweedie v. N. Y. Cent., 194 Fed. 281.

held that this must be construed reasonably and does not mean every hour of the twenty-four; Sundays and holidays are to be excluded.[1] On the other hand, it has been held that the obligation imposed is in the nature of an absolute one and it is no excuse that lighters are unobtainable even though this is due to government action.[2]

§ 55. Turn berth clauses.

As has been seen, under the ordinary charter, whether or not the vessel must await its turn will depend upon the language used. It is, however, sometimes expressly provided that the vessel shall take its turn in loading or discharging. In N. Y. & N. E. R. Co. v. Church,[1] there was such a provision and a penalty imposed of double the demurrage rate for each day lost through failure to perform the stipulation. It was held that this was enforcible.[2] In Evans v. Blair,[3] it was held that such a provision

1. U. S. Shipping Co. v. U. S., 146 Fed. 914; Tweedie v. Pitch Pine Lbr. Co., 156 Fed. 88; Tweedie v. Thomsen, 173 Fed. 710.

2. Tweedie v. Strong, 195 Fed. 929, C. C. A.

1. 58 Fed. 600, C. C. A.

2. See Farrow v. Am. Ag. Chem. Co., 194 Fed. 1018.

3. 114 Fed. 616. See In re Cargo of Coal, 175 Fed. 548; Continental Coal Co. v. Bowne, 115 Fed. 945, to the effect that the clause is in the nature of a penalty and will not be enforced unless the case clearly falls within its terms; Harding v. Cargo of Coal, 147 Fed. 971.

was not absolute but was to be controlled to some extent by business requirements. Where the charter provides that the vessel is to "take its turn," this prevents the lay-days beginning to run till the vessel reaches a berth.[4]

§ 56. Obligation on charterer to have his cargo ready.

The duty of the charterer to have a cargo ready is an absolute one.[1] He is liable to pay demurrage for delay caused by his failure to have a cargo ready even though there is no time fixed for the loading in the charter.[2] This is the basis for the rule that the exception clause will not be construed to protect the charterer in his undertaking to procure a cargo.[3] On the other hand, where the owner knows, or is charged with knowledge, that the cargo is never kept in store in the loading port, the rule is not so strict,[4] for instance, an owner must be deemed to know that coal is not stored at Baltimore, but is

4. Percy v. Union Sulphur Co., 180 Fed. 1, C. C. A.

1. Ardan S. S. Co. v. Weir, L. R. 1905, A. C. 501, 11 Com. Cas. 26.

2. Coverdale v. Grant, L. R. 9, A. C. 470, 475; Postlethwaite v. Freeland, L. R. 5, A. C. 599; Schr. Mahukona Co. v. Cargo of Lbr., 142 Fed. 578.

3. Supra, Sec. 46.

4. See Corrigan v. Iroquois Furnace Co., 100 Fed. 870, C. C. A.

shipped from the mines.[5] The charterer cannot require the owner to wait without compensation until a particular kind of the cargo contracted to be shipped is furnished.[6]

§ 57. Dispatch money.

Frequently in charters where a fixed time for loading or discharging is provided for there is a further clause giving the charterer "dispatch money," for time saved. The dispatch money is generally fixed at half the demurrage rate. Dispatch money is payable for each day saved even though it is a Sunday or holiday and excepted under the charter; this is for the reason that the shipowner gets the benefit in that his ship is at sea during that day.[1] The charterer cannot have dispatch money when he has not loaded the ship within the lay-days although he may not be liable for demurrage by reason of the fact that strikes, which delayed the loading, were mutually excepted under the charter.[2]

5. Donnell v. Amoskeag Co., 118 Fed. 10, C. C. A.; Randall v. Sprague, 74 Fed. 247, C. C. A.

6. Swan v. 550 Tons of Coal, 35 Fed. 307; Kerr v. Schwaner, 177 Fed. 659, C. C. A.

1. West India S. S. Co. v. Field Line, 196 Fed. 591; Mawson v. Beyer, 12 Asp. M. C. 423; contra, under the terms of the particular charter; Fargrove Nav. Co. v. Lavino, 191 Fed. 525.

2. Pool Shipping Co. v. Samuel, 200 Fed. 36, C. C. A. For other cases on dispatch money, construing various clauses in

§ 58. Demurrage through exercise of lien.

The shipowner is sometimes put in a difficult situation when demurrage has accrued upon a cargo which he has in his possession, and the consignee refuses either to pay or give security. If the shipowner makes delivery his lien will be gone, and he will have at the most a personal liability. The better authorities hold that he must act reasonably under the circumstances; that if he can land, lighter or warehouse the goods, without releasing his lien, he should do so, but that if this is impossible under the circumstances he may keep the goods on board and charge demurrage for the time thus consumed.[1]

charters, see The Muirfield, 174 Fed. 75; Elder Dempster v. Earn Line, 168 Fed. 50, C. C. A.; Red R. S. S. Co. v. N. A. Trans. Co., 91 Fed. 168, C. C. A.; The Twilight, 194 Fed. 926.

1. Isham v. Cargo of Piles, 46 Fed. 403; Lyle Co. v. Cardiff, 5 Com. Cas. 87; Smailes v. Hans Dessen, 12 Com. Cas. 117. See Murray v. Jump Lbr. Co., 148 Fed. 123.

CHAPTER IV.

BILLS OF LADING.

Section 59. The bill of lading.
60. The bill of lading as a receipt.
61. Commencement and termination of carrier's liability.
62. The Harter Act. General effect.
63. When applicable.
64. What the Harter Act forbids.
65. Seaworthiness.
66. What constitutes unseaworthiness.
67. Management and navigation.
68. Care of the cargo.
69. Liberties in the bill of lading. Deviation.
70. Perils of the sea.
71. Fire and limitation of liability statutes.
72. Restraint of princes.
73. Heat, breakage, rust, leakage, sweat, vermin.
74. Robbery, theft, pilferage.
75. Insurance clauses.
76. Valuation clauses.
77. Notice of claim.
78. General average.
79. Dangerous cargo.
80. Liens.
81. Deck cargo.

§ 59. The bill of lading.

The importance of the bill of lading as a commercial document cannot be overstated. It serves

three distinct purposes in connection with the carriage of goods (a) as a receipt for the goods, (b) as representing the contract of carriage, (c) as a document of title, that is, taking the place of the goods themselves for the purpose of sale, pledge, etc. This last use of the bill of lading does not fall within the scope of this treatise.

As a contract the chief purpose of the bill of lading is to except causes of loss which the carrier would otherwise assume under its common law liability, a common carrier,[1] in the absence of statute or contract, being liable for all losses except those caused by the act of God, the public enemy, the law of the country, the act or default of the shipper or the proper vice of the goods. It is true that the bill of lading is generally not issued until after the contract has been made; both parties, however, undoubtedly contemplate the issuance of a bill of lading, and the courts have found little difficulty in holding that the terms of the bill of lading constitute a part of the contract.[2] On the other hand, if the provisions of the bill of lading directly contra-

1. A common carrier is one who offers to carry goods for the public. A ship carrying the goods of a single shipper is a private carrier and liable only for negligence. The Wildenfels, 161 Fed. 864, C. C. A.; The Lyra, 255 Fed. 667, C. C. A.

2. The Caledonia, 157 U. S. 124; Calderon v. Atlas S. S. Co., 64 Fed. 874, rev'd on another point, 170 U. S. 272; The Toronto, 174 Fed. 632, C. C. A.; John Vittucci Co. v. Can. Pac. R. Co., 238 Fed. 1005.

dict the agreement previously come to in important particulars, the previous agreement will govern;[3] unless it can be shown that the shipper knew and assented to the provisions of the bill of lading. The situation resembles that, where, after a charter has been signed, a bill of lading has been issued to the charterer; this has already been discussed.[4]

§ 60. The bill of lading as a receipt.

Besides embodying the terms under which the shipment is made, the bill of lading acts as a receipt for the goods, the kind, number or weight, and apparent order and condition being stated therein. In the absence of statute different rules apply to statements in the bill of lading as to the number of packages or weight of the goods shipped and statements as to order and condition. Just as a bill of lading, issued by the master, does not bind ship or owner when no goods have been shipped,[1] so neither ship nor owner is liable if the master overstates the amount of goods delivered to the ship.[2] This rule is

3. North Pac. R. Co. v. Am. Trading Co., 195 U. S. 439, 49 L. Ed. 269; The Olympia, 156 Fed. 252, C. C. A.; The Arctic Bird, 109 Fed. 167.

4. Section 25. The decisions on freight, both under bills of lading and charter-parties, have been discussed, supra, sections 28 to 30.

1. Grant v. Norway, 10 C. B. 665; Pollard v. Vinton, 105 U. S. 7; Friedlander v. T. & P. Ry. Co., 130 U. S. 416, 32 L. Ed. 991.

2. Amer. Sug. Ref. Co. v. Maddock, 93 Fed. 980, C. C. A.

based on the principle that the owner has not authorized his agents to sign for goods not received. The fact that the bill of lading has been transferred to a bona fide purchaser for value makes no difference.[3] Modern bills of lading usually contain a "shipper's load and count" clause or other like provision which makes it all the clearer that the carrier is not to be considered as acknowledging receipt of the precise amount of cargo stated in the bill, and this undoubtedly protects the carrier in case it can show that all received was delivered.[4] The owner can, of course, agree in advance (in the charter party, for instance) to be bound by the amounts stated in the bills of lading and such an agreement will be enforced.[5] On the other hand, statements as to the order and condition of the goods received are regarded as being within the implied authority of the shipowner's servants, and in case the bill of lading comes into the hands of a bona fide transferee for value who has purchased the bill of lading on the faith of the statements therein contained, the owner will not be allowed to show that these statements were false.[6]

3. Friedlander v. T. & P. Ry. Co., supra; The Isola di Procida, 124 Fed. 942.

4. Planters' Fert. Co. v. Elder, 101 Fed. 1001; Vanderbilt v. Ocean S. S. Co., 215 Fed. 886, C. C. A.; McKay v. Ennis, 37 Fed. 229; The Seefahrer, 133 Fed. 793.

5. Sawyer v. Cleveland Iron Mines, 69 Fed. 211; The Sikh, 175 Fed. 869, affd. 184 Fed. 990.

6. Higgins v. Anglo Algerian Co., 248 Fed. 386, C. C. A.

As between the original parties, however, such statements are explainable.[7] The ordinary statement in the bill of lading that the goods received are in "apparent good order and condition" relates merely to the outside of the packages; it does not bind the shipowner as to matters of which his servants could not have knowledge.[8]

The above rules have recently been altered by statute[9] by making the carrier liable on bills of lading issued by its agents although no goods have in fact been received or a less quantity received than the amount stated in the bill of lading, the carrier, however, still retaining the right to insert a "shipper's weight, load and count" clause, when the goods are in fact loaded by the shipper. The statute does not, however, apply to shipments from foreign ports to the United States, but only to shipments from the United States (including both states and territories) to foreign ports and to shipments between ports of different states. The important sections of the statute are as follows:

7. Nelson v. Woodruff, 1 Black, 156, 17 L. Ed. 97; Ship Howard v. Wissman, 18 How. 231, 15 L. Ed. 363; Witzler v. Collins, 70 Me. 290.

8. Whitman v. Vanderbilt, 75 Fed. 422; The Erskine M. Phelps, 231 Fed. 767.

9. Act of Aug. 29, 1916, c. 415, 39 Stats. at L. 538, U. S. Comp. Stats. 1916, secs. 8604aaa to 8604w, printed in full as Appendix B.

The bill of lading as a receipt.

Sec. 20. That when goods are loaded by a carrier such carrier shall count the packages of goods, if package freight, and ascertain the kind and quantity if bulk freight, and such carrier shall not, in such cases, insert in the bill of lading or in any notice, receipt, contract, rule, regulation, or tariff, "Shipper's weight, load, and count," or other words of like purport, indicating that the goods were loaded by the shipper and the description of them made by him or in case of bulk freight and freight not concealed by packages the description made by him. If so inserted, contrary to the provisions of this section, said words shall be treated as null and void and as if not inserted therein.

Sec. 21. That when package freight or bulk freight is loaded by a shipper and the goods are described in a bill of lading merely by a statement of marks or labels upon them or upon packages containing them, or by a statement that the goods are said to be goods of a certain kind or quantity, or in a certain condition, or it is stated in the bill of lading that packages are said to contain goods of a certain kind or quantity or in a certain condition, or that the contents or condition of the contents of packages are unknown, or words of like purport are contained in the bill of lading, such statements, if true, shall not make liable the carrier issuing the bill of lading, although the goods are not of the kind or quantity or in the condition which the marks or labels upon them indicate, or of the kind or quantity or in the condition they were said to be by the consignor. The carrier may also by inserting in the bill of lading the words "Shipper's weight, load, and count," or other words of like purport indicate that the goods were loaded by the shipper and the description of them made by him; and if such statement be true, the carrier shall not be liable for damages caused by the improper loading or by the nonreceipt or by the misdescription of the

goods described in the bill of lading: Provided, however, Where the shipper of bulk freight installs and maintains adequate facilities for weighing such freight, and the same are available to the carrier, then the carrier, upon written request of such shipper and when given a reasonable opportunity so to do, shall ascertain the kind and quantity of bulk freight within a reasonable time after such written request, and the carrier shall not in such cases insert in the bill of lading the words "Shippers' weight," or other words of like purport, and if so inserted contrary to the provisions of this section, said words shall be treated as null and void and as if not inserted therein.

Sec. 22. That if a bill of lading has been issued by a carrier or on his behalf by an agent or employee the scope of whose actual or apparent authority includes the receiving of goods and issuing bills of lading therefor for transportation in commerce among the several States and with foreign nations, the carrier shall be liable to (a) the owner of goods covered by a straight bill subject to existing right of stoppage in transitu or (b) the holder of an order bill, who has given value in good faith, relying upon the description therein of the goods, for damages caused by the non-receipt by the carrier of all or part of the goods or their failure to correspond with the description thereof in the bill at the time of its issue.

§ 61. Commencement and termination of carrier's liability.

As soon as goods are delivered to the carrier for purposes of immediate transportation its liability as such commences.[1] On the other hand, if the con-

1. Can. Pac. v. Wieland, 226 Fed. 670, C. C. A. See Cunard v. Kelley, 115 Fed. 678, C. C. A.

signor orders that no shipment be made until further directions are received from him, the carrier's liability is that of warehouseman only. At the port of discharge, by the weight of authority, the carrier's liability as such ends when notice of the goods' arrival has been given, and a reasonable opportunity afforded the consignee to take them away.[2] A carrier may, however, by the terms of the bill of lading, end its responsibility as carrier on delivery from the ship's tackles.[3]

§ 62. The Harter Act. General effect.

The Harter Act was enacted in 1893.[1] Its general effect is to make owners and ship liable for fault or failure in proper loading, stowage, custody, care or proper delivery of the shipper's goods, and it also makes unlawful any agreement whereby the obligations of the owners to make the ship seaworthy or of the crew to carefully handle and stow the cargo and to care for and properly deliver the same shall in any wise be lessened, weakened or avoided. The statute further makes it the duty of the owner, master or agent to give a bill of lading

2. Tarbell v. Royal Exchange Spg. Co., 110 N. Y. 170; The Titania, 131 Fed. 229, C. C. A.

3. Smith v. Brittain S. S. Co., 123 Fed. 176; The Boskenna Bay, 40 Fed. 91; The Italia, 187 Fed. 113, C. C. A.

1. Act of Feb. 13, 1893, c. 105, 27 Stat. 445, U. S. Comp. Stats. 1916, secs. 8029-8035. Printed in full as appendix A.

describing the goods, and prescribes certain penalties for violation of the statute. On the other hand, the owner or charterer is given an exemption from liability for losses or damage due to faults or errors in management or navigation, provided due diligence has been used to make the ship seaworthy. Prior to the Harter Act the United States courts refused to give effect to negligence clauses,[2] but, as above stated, the act has now to a large extent made such clauses legal; it was, therefore, so fas as shipowners are concerned, an enabling rather than a restrictive statute.

§ 63. When applicable.

Although the act is drawn in broad language, particularly section 3, the courts have construed it, in accordance with what they deemed the legislative intent, solely as modifying the relations between a vessel and her cargo. It does not excuse a vessel from liability to the owners of another vessel or her cargo for a collision.[1] Nor is it applicable to the relations between tug and tow or the cargo carried upon the tow.[2] Personal injuries to passengers, whether or not causing death, and loss or damage to

2. The New England, 110 Fed. 415.

1. The Delaware, 161 U. S. 459, 40 L. Ed. 771.

2. The Coastwise, 233 Fed. 1, C. C. A.; The Murrell, 200 Fed. 826, C. C. A.

baggage, are also not within its terms.[3] It does not apply to a time charter[4] nor to special fittings.[5] As to whether it is limited in its application to contracts with common carriers or whether it extends to modify every agreement between private parties has not been definitely decided. There are many dicta in support of the first view,[6] and at least one to the contrary, not to speak of cases in which the act seems to have been applied to special contracts without objection of counsel or court.[7] The act does not come into operation until the voyage has been commenced.[8] It applies to voyages whether to or from ports of the United States,[9] and also to voyages between United States ports even though in the

3. The Rosedale 88 Fed. 324, affd. 92 Fed. 1021; Moses v. Hamb. Am. Line, 88 Fed. 329; In re Cal. Nav. Co., 110 Fed. 678; Monon. Coal Co. v. Hurst, 200 Fed. 711.

4. Lake Stm. Shipping Co. v. Bacon, 129 Fed. 819; Golcar v. Tweedie, 146 Fed. 563.

5. Hine v. N. Y. & Bermudez, 68 Fed. 920. See The Southwark, 191 U. S. 1, 48 L. Ed. 65.

6. The Fri, 154 Fed. 333, C. C. A.; The Maine, 161 Fed. 401. Contra, Bolton S. S. Co. v. Crossman, 206 Fed. 183.

7. Hansen v. Amer. Tra. Co., 208 Fed. 884.

8. Gilchrist Trans. Co. v. Boston Ins. Co., 223 Fed. 716, C. C. A.; S. S. Wellesley Co. v. Hooper, 185 Fed. 733, C. C. A.; Ralli v. N. Y. & Texas S. S. Co., 154 Fed. 286, C. C. A. These decisions hold that the shipowner is not entitled to the benefit of the exceptions of negligence in management and navigation prior to the commencement of the voyage.

9. Knott v. Botany Worsted Mills, 179 U. S. 69, 45 L. Ed. 90.

same state.[10] It does not excuse the master personally from his fault.[11]

§ 64. What the Harter Act forbids.

The act forbids an agreement on the part of the cargo owner to waive his lien upon the vessel for damage to the goods.[1] It does not prevent an exception in the bill of lading in general terms.[2] Nor does it make invalid exceptions in bills of lading issued for the carriage of goods between two foreign ports even though such exceptions would be invalid under the act, in case of a voyage to or from a U. S. port.[3]

§ 65. Seaworthiness.

In order to secure the exemption from faults or errors in management or navigation, the shipowner must show that he has used "due diligence" to make the ship seaworthy. It is sufficient, however, if he can show that the ship was in fact seaworthy.[1]

10. Re Piper, 86 Fed. 670; The E. A. Shores, Jr., 73 Fed. 342.
11. The Humarock, 234 Fed. 716.
1. The Tampico, 151 Fed. 689, C. C. A.
2. The Toronto, 174 Fed. 632, C. C. A.
3. The Miguel de Larrinaga, 217 Fed. 678.
1. The Indrani, 177 Fed. 941, C. C. A. See Intl. Nav. Co. v. Farr, 181 U. S. 218, 45 L. Ed. 830.

The burden of proof is upon the shipowner.[2] Furthermore, the well-known doctrine that in contracts for the carriage of goods by sea the shipowner warrants that his ship is in fact seaworthy,[3] is not changed by the Harter Act.[4] However, the owner may reduce his obligation to the use of due diligence to make the ship seaworthy by an appropriate stipulation in the bill of lading,[5] but this clause must not be ambiguously phrased,[6] because a modification in the warranty of seaworthiness must be made in clear terms.[7] The due diligence that must be shown is not merely that of the owner, but that of his servants in making the ship fit for sea.[8] The diligence must be in making the ship in fact seaworthy, not in procuring certificates of seaworthiness.[9]

2. The Friesland, 104 Fed. 99; Bradley v. Lehigh Val. R. R., 153 Fed. 350, C. C. A.; The Oneida, 128 Fed. 687, C. C. A.; The Ninfa, 156 Fed. 512.

3. The Caledonia, 157 U. S. 124, 39 L. Ed. 644.

4. The Carib Prince, 170 U. S. 655, 42 L. Ed. 1181; McFadden v. Blue Star Line, L. R. (1905), 1 K. B. 697.

5. The Prussia, 88 Fed. 531, affd. 93 Fed. 837; The Arctic Bird, 109 Fed. 167; The Ontario, 106 Fed. 324, affd. 115 Fed. 769.

6. Ins. Co. of N. A. v. N. G. Lloyd, 106 Fed. 973.

7. The Caledonia, 157 U. S. 124, 39 L. Ed. 644.

8. The Colima, 82 Fed. 665; The Alvena, 74 Fed. 252; The Ninfa, 156 Fed. 512, Intl. Nav. Co. v. Farr, 181 U. S. 218, 45 L. Ed. 830; Dobell v. Rossmore, L. R. (1895), 2 Q. B. 408.

9. The Abbazia, 127 Fed. 495. See Compagnie Maritime v. Meyer, 248 Fed. 881, C. C. A.

§ 66. What constitutes unseaworthiness.

To be seaworthy a vessel must be reasonably fit to encounter the perils of the contemplated voyage.[1] The fact that vessel and cargo received damage in weather not extraordinarily bad does not constitute unseaworthiness because occasionally a vessel receives what is known as an "unlucky twist."[2] A vessel may be unseaworthy if the master is incompetent,[3] but the owner will be protected if he has used proper care in his selection if his obligation is restricted to "due diligence."[4] The fact that a vessel is a few tons short of the supply of coal customarily taken on board for the voyage will not make her unseaworthy,[5] nor will a slight deflection in the compass[6] nor need the ship be able to make repairs at sea.[7] Obsolete construction may constitute unseaworthiness.[8] There is no presumption that a vessel is unseaworthy from the fact that she has met with

1. The Silvia, 171 U. S. 462, 43 L. Ed. 241; The Sandfield, 92 Fed. 663, C. C. A.; Dupont v. Vance, 19 How. 162, 15 L. Ed. 584; The Sintram, 64 Fed. 884.

2. The Frey, 106 Fed. 319.

3. The Cygnet, 126 Fed. 742, C. C. A.

4. The Fri, 154 Fed. 333, C. C. A.; The Humarock, 234 Fed. 716; The Anna, 47 Fed. 525.

5. Hurlbut v. Turnure, 81 Fed. 208, C. C. A., but see British & For. Mar. Ins. Co. v. Kilgour, 184 Fed. 174.

6. The E. A. Shores, Jr., 73 Fed. 342.

7. Pyman v. Von Singen, 3 Fed. 802.

8. The Howden, F. C. No. 6,765, 5 Sawyer, 389.

a previous accident.[9] If, however, a vessel sinks in calm weather she is presumably unseaworthy.[10] Docking once a year is considered sufficient.[11] Although a vessel may not be fit on sailing, yet if it is a condition which can and, under usual circumstances, will be remedied at sea, she is not unseaworthy; [12] otherwise if the defect is such that it probably will not be remedied.[13]

The warranty of seaworthiness "speaks from the time the ship sails" and includes "ballasting and loading and stowage of cargo."[14] "A vessel seaworthy as to navigation may be unseaworthy as to

9. The Longfellow, 104 Fed. 360.

10. Caro. Cement Co. v. Anderson, 186 Fed. 145; Benner Line v. Pendleton, 217 Fed. 497, C. C. A., affd. 246 U. S. 353, 62 L. Ed. 770.

11. The Sandfield, 79 Fed. 371.

12. The Silvia, 171 U. S. 462, 43 L. Ed. 241 (port open); The Niagara, 77 Fed. 329, affd. 84 Fed. 902 (defect in fog-horn); The Mexican Prince, 82 Fed. 484, affd. 91 Fed. 1003 (obstructed valve).

13. Intl. Nav. Co. v. Farr, 181 U. S. 218, 45 L. Ed. 830; The Manitoba, 104 Fed. 145; The Tenedos, 137 Fed. 443, affd. 151 Fed. 1022.

14. The Whitlieburn, 89 Fed. 526; The Colima, 82 Fed. 665; The Oneida, 128 Fed. 687; Corsar v. Speckels, 141 Fed. 260, C. C. A.; S. S. Wellesley Co. v. Hooper, 185 Fed. 733, C. C. A.; The Benjamin Noble, 232 Fed. 382, affd. sub nomine, Capitol Trans. Co. v. Cambria Steel Co., 249 U. S. 334, 63 L. Ed. — (all cases where the vessel was held unseaworthy because the loading made her unfit to meet the ordinary sea perils).

cargo. So a ship may be seaworthy as to one part of the cargo and unseaworthy as to another. The warranty of seaworthiness extends, not alone to the vessel, but also to its reasonable and suitable adaptability and fitness to carry each particular article well known to commerce." Seaworthiness "has relation to the article carried and the different compartments of the ship and their particular use as well as to the navigation of the ship."[15] In the following cases, vessels were held unseaworthy for the reasons stated: leaky decks,[16] leaky hatches,[17] chain locker not tight,[18] a leaky lamp room, allowing oil to reach the cargo,[19] failure to screen valves so that they were clogged by the entrance of foreign matter.[20] A vessel must be seaworthy, or rather, portworthy, at the time she begins taking in cargo, and must again satisfy the warranty of seaworthiness when the voyage is commenced; but there is no continuing warranty that she shall continue seaworthy from the moment loading is commenced until sailing.[21]

15. The Indrapura, 178 Fed. 594, affd. 190 Fed. 711.

16. The Ninfa, 156 Fed. 512; Wright v. Grace, 203 Fed. 360; The Jeannie, 225 Fed. 178, 236 Fed. 463.

17. The C. W. Elphicke, 117 Fed. 279, affd. 122 Fed. 439.

18. The Palmas, 108 Fed. 87.

19. The R. P. Fitzgerald, 212 Fed. 678, C. C. A.

20. The Brilliant, 138 Fed. 743, affd. 159 Fed. 1022.

21. McFadden v. Blue Star Line, L. R. (1905), 1 K. B. 697. See Bowring v. Thebaud, 42 Fed. 794, affd. 56 Fed. 521.

§ 67. Management and navigation.

Inasmuch as the act does not forbid the insertion of other exceptions in the bill of lading than those enumerated, and as it has long been the custom of shipowners to except every conceivable cause of loss or injury to goods shipped, the goods owner is generally precluded from recovery unless he can show some negligence or wrongful act on the part of the shipowner or his servants. Even where such negligence is shown, if it is a fault or error in navigation or in the management of the vessel, provided the owner has used due diligence to make the vessel seaworthy, there can be no recovery. The following have been adjudged to be errors in navigation or management: failure to put into a port of refuge,[1] failure to close a port hole during the voyage,[2] failure to use the ship's pumps,[3] putting to sea in the face of bad weather reports,[4] a stranding due to negligence,[5] a failure to attend to the refrigerating

1. Corsar v. Spreckels, 141 Fed. 260, C. C. A.

2. The Silvia, 171 U. S. 462, 43 L. Ed. 241.

3. The Merida, 107 Fed. 146, C. C. A.; The British King, 89 Fed. 872; The Ontario, 115 Fed. 769, C. C. A. See The Newport News, 199 Fed. 968; The Carisbrook, 247 Fed. 583.

4. Hanson v. Haywood, 152 Fed. 401, C. C. A.

5. The Etona, 64 Fed. 880, affd. 71 Fed. 895; The E. A. Shores, Jr., 73 Fed. 342.

machinery,[6] tipping a vessel by the head in order to examine the propeller,[7] failure to make proper repairs in a port of distress,[8] failure to open the ship's sluices,[9] improper opening of valves,[10] failure to cover ventilators and keep scuppers clear,[11] failure to have a lookout,[12] and failure to inspect at a port of call.[13] In short, management and navigation "include control during the voyage, of everything with which the vessel is equipped for the purpose of protecting her and her cargo against the inroad of the seas."[14]

§ 68. Care of the cargo.

The Harter Act does not relieve the owner from liability due to negligence in the care or custody of the cargo, and makes all stipulations inserted in the

6. Rowson v. Atl. Transport, 9 Com. Cas. 33, L. R. (1903), 2 K. B. 666, where the refrigerating machinery was used partly to cool the crew's provisions.

7. The Indrani, 177 Fed. 941, C. C. A. See Jay Wai Nam v. Anglo-Am. Oil Co., 202 Fed. 822, C. C. A.

8. The Guadeloupe, 92 Fed. 670.

9. The Sandfield, 79 Fed. 371, affd. 92 Fed. 663; The Mexican Prince, 82 Fed. 484, affd. 91 Fed. 1003.

10. Amer. Rfg. Co. v. Rickinson, 124 Fed. 188, C. C. A.; Sun Co. v. Healy, 163 Fed. 48, C. C. A.

11. The Hudson, 172 Fed. 1005.

12. The Rosedale, 88 Fed. 324, affd. 92 Fed. 1021.

13. U. S. v. N. Y. & O. S. S. Co., 216 Fed. 61, C. C. A.

14. The Silvia, 171 U. S. 462, 43 L. Ed. 241; The Sandfield, 92 Fed. 663, C. C. A.

bill of lading for the purpose of securing such an exemption invalid. It is sometimes difficult to determine whether a loss has been caused by a fault or error in management or navigation or whether it is due to negligence in custody or care of the goods shipped. In Knott v. Botany Worsted Mills,[1] wool was shipped in a compartment next to some wet sugar. At the time of the loading, the state of trim of the ship prevented the sugar drainage from reaching the wool. During the voyage, however, owing to the consumption of coal and the loading of cargo at intermediate ports, the ship's trim changed and the sugar drainage damaged the wool. It was held that the owners of the wool could recover their damages from the ship; the change in trim was not an "error in management or navigation." So in The Germanic,[2] a ship was being unloaded in New York, when she suddenly heeled over and sank, damaging the cargo on board. The cause of the sinking was the failure to make due allowance, in taking out the cargo, for the fact that the vessel's upper works were heavily coated with ice, making her very tender. It was held that the ship was liable for the damage done to the cargo. The court intimated that if the heeling and sinking had been due to a failure properly to adjust the ship's ballast, this would be an error in management for which the Harter Act

1. 179 U. S. 69, 45 L. Ed. 90.
2. 196 U. S. 589, 49 L. Ed. 610.

would afford a defence, but that the unloading of the cargo was not management or navigation. A failure to work the pumps, although causing damage to the cargo, is an error in management.[3] A negligent failure to ventilate the cargo is negligence in care of the cargo, and is not excused under the Harter Act.[4] So, where the master retained oil in the vessel's bilges, for the purpose of saving it for its owner, and did not pump it out as he might have done, this was not an error in management, and the ship was liable for damage done thereby to other goods.[5] If the shipper describes the goods as of a particular character and the carrier gives them the treatment appropriate to that character, the carrier is not liable if damage results. For instance, in The Mississippi,[6] stearine was shipped described as "tallow;" it was subjected to weather which would not have damaged tallow, but did damage the shipment in question. It was held that the carrier was not liable. In case cargo is damaged by a cause for which the ship is not responsible, the carrier may recondition, and the cost of the reconditioning will constitute a lien upon the goods.[7].

3. Supra, section 67. See Rowson v. Atlantic Transport, L. R. 1903, 2 K. B. 666.

4. The Skipton Castle, 243 Fed. 523, C. C. A.

5. The Persiana, 185 Fed. 396, C. C. A.

6. 76 Fed. 375.

7. Payne v. Ralli, 74 Fed. 563; Notara v. Henderson, L. R. 7, Q. B. 225.

§ 69. Liberties in the bill of lading. Deviation.

Bills of lading usually contain clauses permitting the vessel to call at any ports in any order, to deviate for the purpose of saving life or property, and to transship the goods in other steamers. There is, however, no clause in the bill of lading which is construed more strictly against the shipowner, and all of the decisions support the proposition that however wide the liberty given it will be cut down by the description of the voyage in the bill of lading. Thus, a liberty to "make deviation" means only reasonable deviations, and a shipowner was held liable for a fall in market price and deterioration of a perishable cargo, when the ship on a voyage to London, called at Havre and Flushing.[1] So the clause giving the carrier liberty to "tow and assist vessels in all situations" does not authorize the towage of a disabled vessel to New York when a towage to Halifax would have taken much less time; and the carrier was held liable for the damage caused to a shipper of cattle.[2] In a recent English case,[3] wool was shipped from New Zealand to London under a bill of lading giving liberty to call or dis-

1. Swift v. Furness Withy, 87 Fed. 345.

2. Schwarzchild v. Natl. S. S. Co., 74 Fed. 257; cf. The Wells City, 61 Fed. 857.

3. Morrison v. Shaw, 13 Asp. M. C. N. S. 504. See Pacific Coast Co. v. Yukon Co., 155 Fed. 29, C. C. A.

charge cargo at intermediate ports. The ship called at Havre to discharge some frozen meat. When a few miles from Havre she was sunk by a submarine. It was held that Havre was not an intermediate port and that the owners were liable. On the other hand, where the voyage was from Pensacola, Florida, to Bristol, England, and the bill of lading reserved the liberty to "call at any port or ports, in or out of the customary route, in any order whatsoever," it was held that the steamer might call first at a continental port.[4] Where the bill of lading provided that in case the goods could not be shipped "by any cause" in the steamer named, they might be forwarded in a succeeding steamer, this was held to justify the carrier in sending a shipment of old metal by a succeeding steamer, in order to make room for perishable cargo; the carrier was held not liable for the loss of the goods even though the shipper's insurance was avoided by the change in the vessel.[5]

In case the ship goes beyond the liberties provided for in the bills of lading, this constitutes a deviation, and the consequences to the shipowner are serious. A deviation has been defined as "a voluntary departure, without necessity or reasonable cause,

4. South Atlantic S. S. Line v. London Stores Co., 255 Fed. 306, C. C. A.

5. The Kansas, 87 Fed. 766. See also Broken Hill Proprietary v. P. & O. S. N. Co., 14 Asp. M. C. S. 116.

from the regular and usual course'' of the voyage;[6] it has the effect of putting an end to the contract between shipper and carrier, and of making the carrier an insurer of the safe arrival of the goods;[7] the limitations in the bill of lading may no longer be relied on.[8] Extreme delay may constitute a deviation,[9] or an unauthorized towage, not for the purpose of saving life.[10] When a vessel went into a dry dock for the purpose of painting her bottom and without marine necessity, this was held a deviation and made the owner liable for a loss of the cargo by fire against which he would otherwise have been protected by the fire statute.[11] Subsequently, in the same case, however, where there was proof that it was customary to dry dock with cargo on board, it was held that there was no deviation.[12] A transshipment into another ship than that in which the goods were originally intended to be shipped, without the assent of the shipper, given either prior or subsequent to the transshipment, and without

6. Hostetter v. Park, 137 U. S. 30, 34 L. Ed. 568

7. Morrison v. Shaw, supra.

8. Schwarzchild v. Natl. S. S. Co., supra.

9. The Citta di Messina, 169 Fed. 472. Ordinarily delay does not amount to a deviation nor make the carrier liable as insurer, Railroad Co. v. Reeves, 10 Wall. 176, 19 L. Ed. 909.

10. Globe Nav. Co. v. Russ Lbr. Co., 167 Fed. 228.

11. The Indrapura, 171 Fed. 929.

12. The Indrapura, 238 Fed. 853.

marine necessity, also entails the consequences of a deviation.[13]

§ 70. Perils of the sea.

Definitions of this classic exception have been often attempted, but none has met with entire approval. As used in a bill of lading its primary significance would seem to be a loss caused by sea water injuring or destroying the goods. It is not thus limited, however; for instance, when heavy weather caused breakage in the interior of the vessel, this was held to be a loss by a peril of the seas.[1] On the other hand, when sea water entered the hull of a ship, and damaged the goods therein because of an explosion in another part of the cargo, this was held not to be a loss by a "peril of the seas," but, seemingly, one by explosion.[2] In line with this decision it has been held that proof that the goods were damaged by sea water is not even prima facie evidence of a loss by a peril of the seas.[3]

13. Calderon v. Atlas S. S. Co., 64 Fed. 874; Trott v. Wood, 1 Gall. 443, F. C. No. 14,190.

1. The Exe, 57 Fed. 399, C. C. A.; The Zealandia, 48 Fed. 697.

2. The G. R. Booth, 171 U. S. 450, 43 L. Ed. 234; The Zulia, 235 Fed. 433. Compare Hamilton v. Pandorf, L. R. 12, A. C. 518, where rats ate a hole in a pipe so that sea-water entered the ship during the voyage. Damage to goods on board was held a loss by perils of the sea.

3. The Folmina, 212 U. S. 354, 53 L. Ed. 546.

A loss by pirates is covered under such an exception,[4] but not a loss by vermin.[5] In general, it may be said that the exception contemplates a fortuitous loss.[6] The clause has the same meaning in a bill of lading as it has in a policy of marine insurance, except that in the former, though not in the latter, it will not be construed as including the negligence of the carrier's servants.[7] Sea damage due to the ship's unseaworthiness is, of course, not covered; and, as a general rule, an exception clause will not be construed as modifying the ship's warranty of seaworthiness if it is possible to give it any other effect.[8]

§ 71. Fire and limitation of liability statutes.

Although it is common to add to the exception of "fire" the words "on hulk, on craft or on shore," it seems that this is unnecessary as the exception is not to be limited to a fire occurring on board the ship.[1] In addition to the contractual stipulation in the bill of

4. Gage v. Tirrell, 9 Allen (Mass.) 310.

5. The Miletus, 5 Blatch, 335; The Euripides, 71 Fed. 728, 52 Fed. 161.

6. Schooner Reeside, 2 Sumn. 567; The Warren Adams, 74 Fed. 413.

7. The G. R. Booth and Hamilton v. Pandorf, supra.

8. The Caledonia, 157 U. S. 124, 39 L. Ed. 644.

1. Jennings v. Clyde S. S. Co., 148 App. Div. 615, affd. 210 N. Y. 570.

lading, there is a statutory exemption from liability for loss or damage by fire to merchandise put on board a vessel "unless such fire is caused by the design or neglect" of the owner.[2] When this statute is applicable it totally wipes out any liability on the part of the owner even though the fire has been due to the negligence of the master or crew; the "design or neglect" of the owner as used in the statute mean the owner's personal design or neglect.[3] The statute does not protect the owner in case the fire occurs on the shore.[4] Inasmuch as by including the negligence of the owner's servants, the statutory exemption gives a greater protection than does the clause in the bill of lading, the owner may be faced with the contention that by making an express stipulation with regard to fire, he has displaced the statute by his contract.[5] It is for this reason that a clause is frequently inserted in the bill of lading to the effect that nothing therein contained is to be taken as depriving the owner of any right to limitation of liability to which he would otherwise be entitled.

In addition to the statutory limitation in case of

2. Rev. Stats. U. S. sec. 4282, U. S. Comp. Stats. 1916, sec. 8020.

3. Walker v. Western Trans. Co., 3 Wall. 150, 18 L. Ed. 172. See The Strathdon, 89 Fed. 374.

4. Constable v. National S. S. Co., 154 U. S. 51, 38 L. Ed. 903; The Egypt, 25 Fed. 320.

5. Ingram v. Services Maritimes, 19 Com. Cas. 105.

fire, there are other statutes which allow the owner, on surrendering his ship and her pending freight, to limit his liability for almost any conceivable loss unless occasioned with his privity or knowledge.[6] Adequately to discuss these statutes would require a book by itself, and would necessitate a divergence into the law of collisions and other questions not germane to the matter in hand. Suffice it to say that ordinarily the Limitation of Liability Statutes are not involved in claims by cargo against the ship because either (a) the value of the ship and her pending freight will be greater than the claim, in which case the owner's right to limit will be of no value to him or (b) if this is not so, the cargo owner may be able to show that the loss was "with the privity or knowledge of the owner,"[7] or, in case the loss was due to the ship's unseaworthiness, may be able to prevent limitation of liability on the ground that the owner's personal warranty that the ship should be seaworthy prevents his taking advantage of the statute.[8]

6. Rev. Stats. 4282 to 4289, Act of June 26, 1884, ch. 121, sec. 18, 23 Stats. at L. p. 57, U. S. Comp. Stats. 8020 to 8028.

7. The burden of proving lack of priority is on the owner. McGill v. Michigan S. S. Co., 144 Fed. 788. In the case of corporations the priority or knowledge referred to is that of the managing officers. Erie Lighter, 108, 250 Fed. 490.

8. Pendleton v. Benner Line, 246 U. S. 353, 62 L. Ed. 770; Luckenbach v. McCahan Rfg. Co., 248 U. S. 139, 63 L. Ed. 170; Capitol Trans. Co. v. Cambria Stl. Co., 249 U. S. 334, 63 L. Ed. —.

§ 72. Restraint of princes.

This means some forcible governmental action which either detains, damages or destroys goods or ship, or in some other way prevents performance of the contract,—a good illustration is the condemnation of ship or goods by a prize court. Detention in quarantine is by restraint of princes,[1] but not detention by legal proceedings brought by private parties.[2] The strong hand of the government need not actually be imposed if there is a well founded apprehension that in case certain action were taken, ship or goods would be subjected to actual physical restraint. Thus, where the master of a neutral ship refused to carry sulphur from Italy to the United States, at the time of the Spanish-American war, on the ground that it was contraband, it was held that he was justified in doing so, and in relanding it after it had been loaded.[3] Where, however, a contract of carriage is made in contemplation of war conditions and that its performance may include the carriage of contraband, the carrier may not rely on this clause as justifying him in a total refusal of

1. The Progreso, 50 Fed. 835; The Bohemia, 38 Fed. 756; Clyde Comm. v. West India S. S. Co., 169 Fed. 275, C. C. A.

2. The Coventina, 52 Fed. 156; Finlay v. Liverpool Co., 23 L. T. 251; Bradlie v. Maryland Ins. Co., 12 Pet. 378, 9 L. Ed. 1123.

3. The Styria, 186 U. S. 1, 46 L. Ed. 1027. See The Kronprinzessin Cecilie, 244 U. S. 12, 61 L. Ed. 960.

performance, because of fear of seizure by a foreign government; in such a case the exception means only actual physical restraint.[4]

Moreover, it is not every act of a government official which will constitute a restraint of princes. Thus, where a collector of customs withheld the clearance of a vessel on the ground that she was carrying contraband, and there was no warrant for such an action, either in the law or in the instructions of his superiors, it was held that this did not constitute a "restraint of princes;" it was merely the error of a subordinate.[5]

If the restraint is caused by the carrier, he cannot plead it in excuse of his non-performance. Thus, where a ship, on a voyage from New York to South Africa, at the time of the Boer war, loaded goods which caused her to be detained by the British authorities on the ground that they were meant for the enemy, the owners of the innocent goods on board were held entitled to recover their losses from the shipowners, the detention having been caused by the shipowners' failure to exercise due precautions in taking the goods on board.[6] Mere difficulty

4. Balfour v. Portland Co., 167 Fed. 1010.

5. Northern Pacific R. Co. v. Amer. Tra. Co., 195 U. S. 439, 49 L. Ed. 269.

6. Dunn v. Bucknall, 8 Com. Cas. 33. See Ciampa v. Brit.

in performance, caused by war conditions, does not justify the refusal to perform a contract even though entered into in times of peace.[7] It has been held that an order as to the employment of the ship directed to the shipowner by the government of his country, which would subject him to penalties if disobeyed, constitutes a "restraint of princes," and excuses the non-performance of a charter, even though no physical restraint is exerted.[8]

§ 73. Heat, breakage, rust, leakage, sweat, vermin.

These exceptions, and others like them, are of considerable benefit to the carrier as if it appears that the loss falls within the terms of one of them, the carrier will be protected unless negligence is shown, and the burden of proving negligence will be upon the goods owner. The effect of the following exceptions have been considered by the courts: heat,[1]

Stm. Co., 20 Com. Cas. 247; Unione Austriaca v. Tujague, 231 Fed. 427, C. C. A.; N. Y. & P. R. S. S. Co. v. Guanica Centrale, 231 Fed. 820, C. C. A.

7. Asso. Cement Mfrs. v. Cory, 31 T. L. R. 442; Furness v. Muller, 232 Fed. 186; Grace v. Luckenbach, 248 Fed. 953. See Essex S. S. Co. v. Langbehn, 250 Fed. 98, C. C. A.

8. Furness v. Rederi Banco, 23 Com. Cas. 99.

1. The Portuense, 35 Fed. 670; The Baralong, 172 Fed. 220; The Good Hope, 197 Fed. 149, C. C. A.; The San Guglielmo, 241 Fed. 969, mod. 249 Fed. 588; The Skipton Castle, 243 Fed. 523.

breakage,[2] rust,[3] leakage,[4] sweat,[5] vermin,[6] leakage and breakage,[7] effect of climate.[8]

Where, however, there was an exception of "wetting by fresh water or by sea water," and the goods were delivered very wet without any explanation by the carrier, it was held that the burden of proving seaworthiness was upon the carrier, and this not being sustained, the goods owners recovered.[9]

§ 74. Robbery, theft, pilferage.

In connection with this clause in the bill of lading, two questions are raised: (a) a question of construction as to whether the loss which has occurred is actually covered by the bill of lading clause, and (b) assuming that the loss is actually covered, whether considerations of public policy do not require that it shall not be given effect to. With

2. The Henry B. Hyde, 90 Fed. 114, C. C. A.; The Lennox, 90 Fed. 308; The Koenigin Luise, 185 Fed. 478, C. C. A.; Crowell v. Union Oil Co., 107 Fed. 302; The Oceana, 171 Fed. 172; The St. Quentin, 162 Fed. 883, C. C. A.

3. The Vaderland, 18 Fed. 733 (includes oxidation of zinc).

4. The Neidenfels, 174 Fed. 293; The Arpillao, 241 Fed. 282.

5. The Flintshire, 69 Fed. 471; The Hudson, 172 Fed. 1005; The Glenlochy, 226 Fed. 971.

6. The Italia, 59 Fed. 617; The Timor, 67 Fed. 356; Stevens v. Navigazione, 39 Fed. 562.

7. The Barracouta, 40 Fed. 498.

8. The Aline, 25 Fed. 562.

9. Herman v. Compagnie, 242 Fed. 859, C. C. A.

regard to the question of construction the English courts have construed such clauses very narrowly; they have held that the exception of "theft" standing alone, meant a taking by violence, and would not cover a theft by persons on board the ship or in the employ of the shipowner.[1] Consequently, the exception is now commonly phrased as "robbery, theft or pilferage, on board, on craft, or on shore, by all persons whomsoever, whether in the employ of the shipowner or not." If considerations of public policy and of the Harter Act could be left out of consideration, this clause would seem to give the carrier complete protection from this class of claims.

The American courts have treated the carrier generously in the matter of construction. It has been held by the New York Court of Appeals,[2] at a date prior to the enactment of the Harter Act, that an exception of "thieves" taken in connection with that of "barratry of the master and mariners" protected the carrier when part of a shipment of gold was stolen by the purser, the New York State Courts following the English courts, in refusing to declare agreements between shipper and carrier void on the ground of public policy. The Harter Act, however, declares that it shall not be lawful to insert in any bill of lading any clause whereby the owner shall be relieved from liability for loss or

1. Steinman v. Angier Line, L. R. (1891), 1 Q. B. 619.
2. Spinetti v. Atlas S. S. Co., 80 N. Y. 71.

damage arising from negligence, fault or failure in the proper custody or care of the goods; clauses to the contrary are made null and void. This prevents the shipowner validly excepting theft on the part of the crew.[3] A general exception of thieves is, however, valid,[4] and would protect the shipowner unless it were shown that due care had not been used to protect the goods against theft.[5]

§ 75. Insurance clauses.

Such clauses take two forms: (a) "not liable for any damage capable of being covered by insurance" and (b) "the carrier shall have the benefit of any insurance effected upon the goods." The effect of the first of these clauses is merely to incorporate the provisions of an ordinary insurance policy in the exception clause of the bill of lading. In The Titania,[1] Judge Addison Brown said: "The clause in relation to insurance cannot reasonably be construed as intended to mean any possible insurance, in any possible company, and upon any possible premium. It must be held to refer only to insurance which might be obtained in the usual course of business from the ordinary insurance companies,

3. The Seneca, 163 Fed. 591, revd. on another point, 172 Fed. 370.

4. Cunard S. S. Co. v. Kelley, 115 Fed. 678, C. C. A.

5. The Ghazee, 172 Fed. 368.

1. 19 Fed. 101.

either in the usual form, or in the customary mode of business, on special application. I see no reason, however, for not regarding the clause as valid, construed as referring only to insurance which might be effected in the ordinary course of insurance business. Thus construed, it exempts the shipowners from loss which might be thus insured against, and which might be recovered of the insurers, if not directly caused by negligence on the part of the ship." Considered subject to these limitations and to those imposed by the Harter Act, the clause adds little if anything to the protection given the carrier by the other clauses in the bill of lading. It will not protect the carrier from a general average claim by the goods owner.[2]

The clause giving the carrier the benefit of the insurance effected by the shipper is valid and enforcible, and would be extremely effective in protecting the carrier, if it were not for a device adopted by the insurance companies. This is fully explained in the decision of the Supreme Court in the case of Luckenbach v. McCahan Sugar Refining Co.,[3] where the goods were damaged because of the ship's unseaworthiness. The court there said:

> "The shipper had effected full insurance. The bills of lading sued on contain the following clause:
>
> 'In case of any loss, detriment, or damage done to or sustained by said goods or any part thereof for which the

2. Crooks v. Allan, L. R. 5, Q. B. D. 38.

3. 248 U. S. 139, 63 L. Ed. 170.

carrier shall be liable to the shipper, owner, or consignee, the carrier shall, to the extent of such liability, have the full benefit of any insurance that may have been effected upon or on account of said goods.'

Such a clause is valid, because the carrier might himself have insured against the loss, even though occasioned by his own negligence; and if a shipper under a bill of lading containing this provision effects insurance and is paid the full amount of his loss, neither he nor the insurer can recover against the carrier. Phoenix Ins. Co. v. Erie & W. Transp. Co., 117 U. S. 312; Wager v. Providence Ins. Co., 150 U. S. 99. In the case at bar, the shipper has received from the insurance companies an amount equal to the loss; but it is contended that the money was received as a loan or conditional payment merely, and that, therefore, the carrier is not relieved from liability. The essential facts are these:

The policies under which the shipper was insured contained the following, or a similar, provision:

'Warranted by the assured free from any liability for merchandise in the possession of any carrier or other bailee, who may be liable for any loss or damage thereto; and for merchandise shipped under a bill of lading containing a stipulation that the carrier may have the benefit of any insurance thereon.'

The situation was, therefore, this: The carrier (including in this term the charterer, the ship, and the owners) would, in no event, be liable to the shipper for the damages occasioned by unseaworthiness, unless guilty of negligence. The insurer would, in no event, be liable to the shipper, if the carrier was liable. In case the insurer should refuse to pay until the shipper had established that recovery against the carrier was not possible, prompt settlement for loss (which is essential to actual indemnity and demanded in the interest of commerce) would be defeated. If, on the other hand, the insurers should settle the loss,

before the question of the carrier's liability for loss had been determined, the insurer would lose the benefit of all claims against the carrier, to which it would be subrogated in the absence of a provision to the contrary in the bill of lading (The Potomac, 105 U. S. 630, 634), and the carrier would be freed from liability to anyone. In order that the shipper should not be deprived of the use of money which it was entitled to receive promptly after the loss, either from the carrier or from the insurers, and that the insurer should not lose the right of subrogation, agreements in the following (or similar) form were entered into between the insurers and the shipper:

'New York, Aug. 15, 1912.

Received from the Federal Insurance Company, twenty-three hundred four and 16/100 dollars, as a loan and repayable only to the extent of any net recovery we may make from any carrier, bailee, or others on account of loss to our property (described below) due to damage on S. S. Julia Luckenbach from Porto Rico/Philadelphia, on or about ....., 190.., or from any insurance effected by any carrier, bailee, or others on said property, and as security for such repayment we hereby pledge to the said Federal Insurance Company the said recovery and delivery to them duly indorsed the bills of lading for said property, and we agree to enter and prosecute suit against said railroad, carrier, bailee, or others on said claim with all due diligence at the expense and under the exclusive direction and control of the said Federal Insurance Company.

The W. J. McCahan Sugar Refining Co.,

R. S. Pomeroy, Treasurer.

$2,304.16.

Description of property—Sugar.'

Upon delivery of this and similar agreements, the shipper received from the insurance companies, promptly after

the adjustment of the loss, amounts aggregating the loss; and this libel was filed in the name of the shipper, but for the sole benefit of the insurers, through their proctors and counsel, and wholly at their expense. If, and to the extent (less expenses) that, recovery is had, the insurers will receive payment or be reimbursed for their so-called loans to the shipper. If nothing is recovered from the carrier, the shipper will retain the money received by it without being under obligation to make any repayment of the amounts advanced. In other words, if there is no recovery here, the amounts advanced will operate as absolute payment under the policies.

Agreements of this nature have been a common practice in business for many years. Pennsylvania R. Co. v. Burr, 65 C. C. A. 331, 130 Fed. 847; Bradley v. Lehigh Valley R. Co., 82 C. C. A. 426, 153 Fed. 350. It is clear that if valid and enforced according to their terms, they accomplish the desired purpose. They supply the shipper promptly with money to the full extent of the indemnity or compensation to which he is entitled on account of the loss; and they preserve to the insurers the claim against the carrier to which, by the general law of insurance, independently of special agreement, they would become subrogated upon payment by them of the loss. The carrier insists that the transaction, while in terms a loan, is in substance a payment of insurance; that to treat it as if it were a loan is to follow the letter of the agreement and to disregard the actual facts; and that to give it effect as a loan is to sanction fiction and subterfuge. But no good reason appears either for questioning its legality or for denying its effect. The shipper is under no obligation to the carrier to take out insurance on the cargo; and the freight rate is the same whether he does or does not insure. The general law does not give the carrier, upon payment of the shipper's claim, a right by subrogation against

the insurers. The insurer has, on the other hand, by the general law, a right of subrogation against the carrier. Such claims, like tangible salvage, are elements which enter into the calculations of actuaries in fixing insurance rates; and, at least in the mutual companies, the insured gets some benefit from amounts realized therefrom. It is essential to the performance of the insurer's service that the insured be promptly put in funds, so that his business may be continued without embarrassment. Unless this is provided for, credits which are commonly issued against drafts or notes with bills of lading attached would not be granted. Whether the transfer of money or other things shall operate as a payment is ordinarily a matter which is determined by the intention of the parties to the transaction. Compare, The Kimball, 3 Wall. 37, 44. The insurer could not have been obliged to pay until the condition of their liability, i. e, non-liability of the carrier, had been established. The shipper could not have been obliged to surrender to the insurers the conduct of the litigation against the carrier until the insurers had paid. In consideration of securing them the right to conduct the litigation, the insurers made the advances. It is creditable to the ingenuity of business men that an arrangement should have been devised which is consonant both with the needs of commerce and the demands of justice."

In other words, although in the absence of such a practice, the carrier would be entitled, under such a clause, to the insurance money even with respect to losses as to which it could not have a total exemption from liability under the Harter Act, the insurance companies have now found a means of making such clauses of no benefit to the carrier.

§ 76. Valuation clauses.

Bills of lading covering the shipment of general merchandise commonly have a clause either valuing the goods at not exceeding $100 (or other amount) per package, or providing that not exceeding $100 shall be recovered from the carrier for the loss of any one package. Both types of clause are enforced by the courts,[1] but the form of clause adopted may make a considerable difference in a case of partial loss. Where the goods are definitely valued at a certain sum, it has been said that there may be no recovery for damage if the goods are still worth that amount;[2] on the other hand, if the amount stated in the bill of lading merely limits the amount of recovery, the goods owner should be entitled to recover his actual loss up to the amount fixed.[3] An agreement that the goods owner is limited to the invoice price of the goods is also enforcible.[4]

The valuation clause cannot be availed of if the goods are converted by the carrier, but is enforcible

1. Hohl v. Norddeutscher Lloyd, 175 Fed. 544, C. C. A.; Boyle v. Bush Terminal, 210 N. Y. 389; Reid v. Fargo, 241 U. S. 544, 60 L. Ed. 1156; The Koan Maru, 251 Fed. 384; Kuhnhold v. Compagnie, 251 Fed. 387.

2. Duplan Silk Co. v. Lehigh Val. R. Co., 223 Fed. 600, C. C. A.

3. Duplan Silk Co. v. Lehigh Val. R. Co., supra.

4. The Aline, 25 Fed. 562.

though the goods are stolen by the carrier's employees.[5]

The valuation clause must be clearly expressed. If it appears that the carrier is attempting to obtain a total exemption from liability for all goods above a certain value, the clause will be ineffective for all purposes.[6]

§ 77. Notice of claim.

One of the most important clauses in the bill of lading, and one by which carriers have often escaped liability for meritorious claims, is the clause requiring notice of loss as a condition precedent to liability. Such clauses differ considerably in phraseology, and the consignee intending to present a claim should carefully comply with the requirements of the bill of lading, as the courts strictly enforce such provisions. In The Persiana,[1] where the clause provided for notice before the removal of the goods, it was held that the claim was barred because notice was not given, and clauses giving a longer period for giving notices have frequently been sustained.[2]

5. D'Utassy v. Barrett, 219 N. Y. 420; Moore v. Duncan, 237 Fed. 80, C. C. A.

6. Calderon v. Atlas S. S. Co., 170 U. S. 272, 42 L. Ed. 1033; Lines v. Atlantic Transport, 223 Fed. 624, C. C. A.

1. 185 Fed. 396, C. C. A.

2. The Westminster, 127 Fed. 680, C. C. A.; The Arctic Bird, 109 Fed. 167; The San Guglielmo, 249 Fed. 588, C. C. A.

Even though the carriers know of the loss, the requirement of notice is not dispensed with.[3] Where the bill of lading requires merely notice of loss, the notice may be informal, as by sending a telegram.[4]

§ 78. General average.

A discussion of general average is outside the scope of this work; but inasmuch as clauses relating to general average are introduced into bills of lading, it may be permissible briefly to refer to them. Ordinarily bills of lading clauses will not be construed as affecting rights and obligations as to general average between goods and ship. Thus an exception of all damage or loss that may be insured against will not excuse the ship from contributing in general average, although general average losses are insurable.[1] Similarly the fire statute[2] does not protect the shipowner against general average claims.[3]

Previous to the Harter Act, in case a general average situation had resulted from the negligence

3. The Queen of the Pacific, 180 U. S. 49, 45 L. Ed. 419.

4. Georgia R. Co. v. Blish Milling Co., 241 U. S. 190, 60 L. Ed. 948; The D. Harvey, 139 Fed. 755.

1. Crooks v. Allan, L. R. 5, Q. B. D. 38.

2. Supra, sec. 71.

3. The Roanoke, 59 Fed. 161. Nor does the Harter Act protect the shipowner from contributing in general average, The Ernestina, 259 Fed. 772, C. C. A.

of master or crew, the ship was debarred from recovery and had to indemnify the cargo for any damage it had suffered. It was at one time thought that the Harter Act had blotted out the fault of the shipowner, in cases of errors in management and navigation, and that even without an express stipulation, the owner in such cases would be treated just as if the negligence of his servants had not caused or contributed to the loss. This view was held erroneous by the Supreme Court in The Irrawaddy.[4] Subsequently a clause was introduced in the bill of lading expressly providing that in cases of general average resulting from fault or errors in navigation or from failure to make the ship seaworthy, provided due diligence was used, the cargo owners should contribute in general average with the shipowner. This clause was held enforcible in The Jason[5] and general average contributions were collected from the cargo although the general average situation had been caused by negligence in navigation.

§ 79. Dangerous cargo.

The shipowner impliedly warrants that his ship is fit for the voyage, and will not injure the cargo. There is, however, apparently no corresponding warranty on the part of the cargo owner that his

4. 171 U. S. 187, 43 L. Ed. 130.
5. 225 U. S. 32, 56 L. Ed. 969.

goods will not injure the ship.[1] If, however, there is any danger in carrying the cargo of which the cargo owner knows and the shipowner does not know, and could not reasonably be expected to know, the cargo owner must inform the owner of it.[2] In International Mercantile Marine v. Fels,[3] a quantity of "Fels-Naptha" soap was shipped from Philadelphia to Liverpool. Naptha vapor, which had exuded from the soap, exploded at Liverpool and damaged the ship. It was held that the use of the word "naptha" in the description of the soap was notice of its dangerous character. Where a shipper represented that a piece of machinery did not weigh more than 9,000 lbs. whereas actually it weighed over 19,000, with the result that the carrier's discharging tackle was broken by it, it was held that the carrier could not recover as it had opportunity to discover the weight equally as good as that of the shipper.[4]

§ 80. Liens.

Under the law of the United States, the ship has a lien upon the goods for freight, demurrage and

1. The William J. Quillan, 180 Fed. 681, C. C. A.; Hamburg Am. v. Atl. Transport, 236 Fed. 505, C. C. A.; The Zulia, 235 Fed. 433.

2. Mitchell v. Steel, 22 Com. Cas. 63.

3. 164 Fed. 337, affd. 170 Fed. 275.

4. Hanna v. Pitt, 121 App. Div. 420 (N. Y.)

other charges, and the goods owner has a lien upon the ship for any damage to or loss of the goods for which the ship may be liable.[1] These liens are true maritime liens like the liens for collision or salvage, with the exception that the ship's lien upon the goods is lost by a delivery without reservation.[2] There is no lien for the breach of a merely executory agreement, i. e., where cargo has never been shipped.[3]

§ 81. Deck cargo.

A bill of lading which is silent as to the place of stowage imports a contract that the goods are to be stowed under deck, and parole evidence is inadmissible to show an agreement on the part of the shipper that the goods were to be carried on deck.[1] But where a written contract had been entered into, providing for shipment on deck, the fact that the bill of lading was issued "clean," did not make the

1. The Maggie Hammond, 9 Wall. at 449, 19 L. Ed. 772; The Bird of Paradise, 5 Wall. 545, 18 L. Ed. 662; Davis v. Smokeless Fuel Co., 196 Fed. 753, C. C. A.; The Hyperion's Cargo, 2 Low. 93; Wellman v. Morse, 76 Fed. at 577.

2. Bags of Linseed, 1 Black, at 112, 17 L. Ed. 35; Riley v. Cargo of Iron Pipes, 40 Fed. 605; The Giulio, 34 Fed. 909; Pioneer Fuel Co. v. McBrier, 84 Fed. 495; Costello v. Laths, 44 Fed. 105.

3. The Ira Chaffee, 2 Fed. 401; The Monte A., 12 Fed. 331; The Saturnus, 250 Fed. 407, C. C. A.

1. The Delaware, 14 Wall. 579, 20 L. Ed. 779. See Meyer v. Pacific Mail, 58 Fed. 923.

shipment on deck unlawful with regard to those bound by the original contract of shipment.[2] Goods stowed on deck without the shipper's consent are at the ship's risk, the shipowners being liable for any loss or damage thereto unless it clearly appears that like damage would have been suffered had the goods been stowed under deck.[3] If, however, the goods are stowed on deck in accordance with the custom of the trade, the ship is not liable for a loss by peril of the seas, even though the shipper is unaware of the custom and a clean bill of lading was signed.[4] When goods have been stowed on deck with the consent of the shipper, the obligation of the shipowner is not that of a common carrier but requires merely the exercise of reasonable skill and care.[5] But even if the contract provides that the deck load is to be "at shipper's risk," this does not excuse the owner in case he loads such a large deck load as to make the ship unseaworthy.[6] Shipment of cotton in the alley-ways of a steamer on a voyage

2. Two Hundred and Sixty-eight Hogsheads of Molasses, 1 Hask. 24, Fed. Cas. No. 14,296.

3. The Governor Carey, 2 Hask. 487, F. C. No. 5645a; Chubb v. Seven Thousand Eight Hundred Bushels of Oats, Fed. Cas. No. 2709; The Gualala, 178 Fed. 402, C. C. A.

4. The Del Norte, 234 Fed. 667, but see The Gran Canaria, 16 Fed. 868.

5. Lawrence v. Minturn, 17 How. 100, 15 L. Ed. 58; The Hettie Ellis, 20 Fed. 507.

6. The Royal Sceptre, 187 Fed. 224.

from Wilmington, N. C., to Bremen, in November, is a shipment on deck.[7] But cotton stowed on the main deck of a coastwise steamer, on a voyage from Savannah to Baltimore, is to be considered as below deck, where it is under the upper deck and enclosed by strong shutters and bulwarks.[8] The York-Antwerp Rules provide that no jettison of deck cargo shall be made good as general average and that every structure not built in with the frame of the vessel shall be considered to be a part of the frame of the vessel.

7. The Kirkhill, 99 Fed. 575, C. C. A.
8. The William Crane, 50 Fed. 444.

CHAPTER V.

DAMAGES.

Section 82. In general.
83. Loss or damage to goods.
84. Delay.
85. Breach of charter.

§ 82. In general.

The fundamental principle on which damages are awarded is that the person wronged is to be put so far as possible in the position he would have occupied had the loss not occurred; as frequently expressed, the rule is restitutio in integrum. The damages legally recoverable, however, do not include the expenses of litigation; the successful suitor is awarded costs, which supposedly, though probably never in actual practice, cover this item. There are, moreover, certain rules which often make the amount recovered less than an actual indemnity. The most important of these is that in actions for breach of contract the guilty party can only be held liable for such consequences as may reasonably be supposed to have been in the contemplation of the parties at the time of making the contract.[1] The party injured is also under the duty of making reasonable efforts to miti-

1. Globe Ref. Co. v. Landa Oil Co., 190 U. S. 540, 47 L. Ed. 1171.

gate the damages suffered by him.[2] Where a party has reasonably incurred expenses in order to mitigate damages, he may charge the other party with them. Thus, where a charterer was unable to secure sufficient railroad cars to receive the cargo at the port of discharge, and the owner hired lighters to lessen the amount of demurrage which would otherwise have become payable, it was held that the hire of the lighters was recoverable from the charterer.[3]

§ 83. Loss or damage to goods.

The general rule is that in case of damage to cargo through fault of the carrier, the carrier's liability is measured by the difference between the market value of the cargo in the condition in which it would have arrived had the carrier performed its duty, and its market value in its damaged condition.[1] If the goods have been lost and the freight prepaid, the measure of damages is the value of the goods at the place of destination.[2] If the freight has not been

2. The Thomas P. Sheldon, 113 Fed. 779. See Stoomvart v. Lind, 170 Fed. 918, C. C. A.; The Antonio Zambrana, 70 Fed. 320.

3. Cazalet v. Morris, 1916 Sess. Cas. (Scotch) 952.

1. United S. S. Co. v. Haskins, 181 Fed. 962, C. C. A.

2. The Arctic Bird, 109 Fed. 167; The Hugo, 61 Fed. 860; Rodocanachi v. Milburn, L. R. 18, Q. B. D. 67; Dufourcet v. Bishop, L. R. 18, Q. B. D. 373. Cf. The Aleppo, 7 Ben. 121, F. C. No. 158.

paid, it must be deducted from the amount recovered.[3] The libellant cannot recover the loss of a profit he would have made on a contract of sale if the merchandise had arrived in good condition,[4] unless it appears that such contract was made known to the carrier, and the contract of carriage made on that basis. Where a machine was lost which had no market value, it was held that the libellant was entitled to its value at the port of shipment together with expenses and freight paid.[5]

§ 84. Delay.

In case of a delay for which the carrier is liable, the measure of damages is the difference between the market value of the property on the date at which it should have arrived and its value on the date of its actual arrival.[1] In the case first cited in the note, lead was shipped to Japan during a time when Japan was at war with China. Owing to a delay, for which the carrier was liable, the lead missed the steamer on which it should have gone

3. The Protection, 102 Fed. 516, C. C. A.

4. The Berengere, 155 Fed. 439.

5. The Protection, supra. Cf. Nor. Comm. Co. v. Lindblom, 162 Fed. 250; LaBourgogne, 144 Fed. 781, C. C. A.

1. Farmer's L. & T. Co. v. N. P. R. Co., 120 Fed. 873, affd. sub nomine N. P. R. Co. v. Amer. Tra. Co., 195 U. S. 439, 49 L. Ed. 269; The Styria, 101 Fed. 728, C. C. A., revd. on merits, 186 U. S. 1, 46 L. Ed. 1027.

forward, and before the date of its arrival the war had come to an end and the lead had greatly fallen in value. The damages were based on the difference between the market price of the lead when it should have arrived and on the date of its arrival. Where horses were shipped to the Klondike, and the proof showed that horses there were worth $20 per day, the damages for delay were computed on that basis.[2] The carrier is also liable for any depreciation in the value of perishable property due to the delay.[3]

§ 85. Breach of charter.

In case of failure to perform on the part of the owner, the rule as to the measure of damages is that the charterer may charge the owner with the expense he may have been put to in obtaining any fit substitute to take the place of the chartered vessel.[1] In case a vessel is unobtainable, the charterer is entitled to the profits he would have made, based on market prices.[2] If the owner fails to take a full cargo, the charterer's damages are based on the excess cost of shipping the goods shut out over the price agreed upon with the owner.[3] In case the

2. La Conner Trad. Co. v. Widmer, 136 Fed. 177, C. C. A.

3. The Caledonia, 50 Fed. 576, affd. 157 U. S. 124, 39 L. Ed. 644.

1. Sanders v. Munson, 74 Fed. 649, C. C. A.; The Rossend Castle, 30 Fed. 462.

2. The Ada, 239 Fed. 363; Vogemann v. Raeburn, 180 Fed. 97, C. C. A.; The Oregon, 55 Fed. 666, C. C. A.

3. The A. Denicke, 138 Fed. 645, C. C. A.

charterer refuses to load, the owner must endeavor to mitigate the damages by securing another charter,[4] and the owner's damages will be the difference between the amount he would have earned under the broken charter, and the amount actually secured.[5] If under the substituted charter the ship is left in a more advantageous position than would have been the case had the original charter been carried out, this fact also will be taken into consideration.[6]

The rule already referred to that the consequences of the breach must have been in the contemplation of the parties at the time of making the contract is strictly enforced. However, when it appears that the parties must have understood that a breach would entail special damages, such damages may be recovered. Thus, where the owner of a tug made a contract to tow a stranded vessel, but failed to start in time so that the vessel was lost in a storm, it was held that the owner of the vessel lost could recover its value from the tug owner.[7] Where a vessel was chartered to carry a cargo of grain, and the charterer rechartered her at a profit, but rates had fallen

4. Johnson v. Meeker, 96 N. Y. 93.

5. Thebideau v. Cairns, 171 Fed. 233; Venus Shipping Co. v. Wilson, 152 Fed. 170, C. C. A.

6. Constantine v. West India S. S. Co., 231 Fed. 472.

7. Boutin v. Rudd, 82 Fed. 685, C. C. A.; Mott v. Chew, 137 Fed. 197. Cf. DeFord v. Maryland Stl. Co., 113 Fed. 72, C. C. A.

at the time of performance, it was held on the owner's refusal to perform that no substantial damages were recoverable as such rechartering was not contemplated by the owners at the time of making the contract.[8] On the other hand, where a vessel was time chartered for the carriage of fruit, the charter containing a guaranty of the vessel's speed, it was held that the time charterer could hold the owner for damage to a cargo of bananas occasioned by a breach of this warranty, such damages being in the contemplation of the parties.[9]

8. Richard v. Holman, 123 Fed. 734. See The Henry Buck, 39 Fed. 211; Holland v. 725 Tons of Coal, 36 Fed. 784.

9. The Ceres, 72 Fed. 936, C. C. A. See The George Dumois, 115 Fed. 65, C. C. A.; The Ask, 156 Fed. 678.

APPENDIX A

The Harter Act

THE HARTER ACT.

(Discussed in text sections 62 to 68; U. S. Comp. Stats., 1916, secs. 8029 to 8035.)
[Feb. 13, 1893.]

Sec. 1. It shall not be lawful for the manager, agent, master or owner of any vessel transporting merchandise or property from or between ports of the United States and foreign ports to insert in any bill of lading or shipping document any clause, covenant, or agreement whereby it, he, or they shall be relieved from liability for loss or damage arising from negligence, fault, or failure in proper loading, stowage, custody, care, or proper delivery of any and all lawful merchandise or property committed to its or their charge. Any and all words or clauses of such import inserted in bills of lading or shipping receipts shall be null and void and of no effect.

Sec. 2. It shall not be lawful for any vessel transporting merchandise or property from or between ports of the United States of America and foreign ports, her owner, master, agent or manager to insert in any bill of lading or shipping document any covenant or agreement whereby the obligations of the owner or owners of said vessel to exercise due diligence, properly equip, man, provision, and outfit

said vessel, and to make said vessel seaworthy and capable of performing her intended voyage, or whereby the obligations of the master, officers, agents, or servants to carefully handle and stow her cargo and to care for and properly deliver same, shall in any wise be lessened, weakened, or avoided.

Sec. 3. If the owner of any vessel transporting merchandise or property to or from any port in the United States of America shall exercise due diligence to make the said vessel in all respects seaworthy and properly manned, equipped, and supplied, neither the vessel, her owner, or owners, agent, or charterers shall become or be held responsible for damage or loss resulting from faults or errors in navigation or in the management of said vessel, nor shall the vessel, her owner or owners, charterers, agent, or master, be held liable for losses arising from dangers of the sea or other navigable waters, acts of God, or public enemies, or the inherent defect, quality, or vice of the thing carried, or from insufficiency of package, or seizure under legal process, or for loss resulting from any act or omission of the shipper or owner of the goods, his agent or representative, or from saving or attempting to save life or property at sea, or from any deviation in rendering such service.

Sec. 4. It shall be the duty of the owner or owners, masters, or agent of any vessel transporting mer-

chandise or property from or between ports of the United States and foreign ports to issue to shippers of any lawful merchandise a bill of lading, or shipping document, stating, among other things, the marks necessary for identification, number of packages, or quantity, stating whether it be carrier's or shipper's weight, and apparent order or condition of such merchandise or property delivered to and received by the owner, master, or agent of the vessel for transportation, and such document shall be prima facie evidence of the receipt of the merchandise therein described.

Sec. 5. For a violation of any of the provisions of this act the agent, owner, or master of the vessel guilty of such violation, and who refuses to issue on demand the bill of lading herein provided for, shall be liable to a fine not exceeding two thousand dollars. The amount of the fine and costs for such violation shall be a lien upon the vessel, whose agent, owner, or master is guilty of such violation, and such vessel may be libeled therefor in any district court of the United States, within whose jurisdiction the vessel may be found. One-half of such penalty shall go to the party injured by such violation and the remainder to the Government of the United States.

Sec. 6. This act shall not be held to modify or repeal sections forty-two hundred and eighty-one,

forty-two hundred and eighty-two, and forty-two hundred and eighty-three of the Revised Statutes of the United States, or any other statute defining the liability of vessels, their owners, or representatives.

Sec. 7. Sections one and four of this act shall not apply to the transportation of live animals.

APPENDIX B

Federal Bills of Lading Act

BILLS OF LADING ACT.

(U. S. Comp. Stats., 1916, 8604 aaa to 8604 w.)

An act relating to bills of lading in interstate and foreign commerce.

Bills of lading—39 Stat. L., 538—Issued in interstate and foreign commerce governed hereby.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That bills of lading issued by any common carrier for the transportation of goods in any Territory of the United States, or the District of Columbia, or from a place in a State to a place in a foreign country, or from a place in one State to a place in another State, or from a place in one State to a place in the same State through another State or foreign country, shall be governed by this act.

Straight bills defined.

Sec. 2. That a bill in which it is stated that the goods are consigned or destined to a specified person is a straight bill.

Order bills defined—Negotiability.

Sec. 3. That a bill in which it is stated that the goods are consigned or destined to the order of any person named in such bill is an order bill. Any pro-

vision in such a bill or in any notice, contract, rule, regulation, or tariff that it is nonnegotiable shall be null and void and shall not affect its negotiability within the meaning of this act unless upon its face and in writing agreed to by the shipper.

Issued in part for contintental use forbidden—Proviso—For insular, etc., use permitted.

Sec. 4. That order bills issued in a State for the transportation of goods to any place in the United States on the Continent of North America, except Alaska and Panama, shall not be issued in parts or sets. If so issued, the carrier issuing them shall be liable for failure to deliver the goods described therein to anyone who purchases a part for value in good faith, even though the purchase be after the delivery of the goods by the carrier to a holder of one of the other parts: Provided, however, That nothing contained in this section shall be interpreted or construed to forbid the issuing of order bills in parts or sets for such transportation of goods to Alaska, Panama, Porto Rico, the Philippines, Hawaii, or foreign countries, or to impose the liabilities set forth in this section for so doing.

Duplicates—Character to be noted—Liability for failure—Exceptions.

Sec. 5. That when more than one order bill is issued in a State for the same goods to be trans-

ported to any place in the United States on the Continent of North America, except Alaska and Panama, the word "duplicate," or some other word or words indicating that the document is not an original bill, shall be placed plainly upon the face of every such bill except the one first issued. A carrier shall be liable for the damage caused by his failure so to do to anyone who has purchased the bill for value in good faith as an original, even though the purchase be after the delivery of the goods by the carrier to the holder of the original bill: Provided, however, That nothing contained in this section shall in such case for such transportation of goods to Alaska, Panama, Porto Rico, the Philippines, Hawaii, or foreign countries be interpreted or construed so as to require the placing of the word "duplicate" thereon, or to impose the liabilities set forth in this section for failure so to do.

Straight bills not negotiable—Memoranda.

Sec. 6. That a straight bill shall have placed plainly upon its face by the carrier issuing it "non-negotiable" or "not negotiable."

This section shall not apply, however, to memoranda or acknowledgments of an informal character.

Negotiability of order bills.

Sec. 7. That the insertion in an order bill of the name of a person to be notified of the arrival of the

goods shall not limit the negotiability of the bill or constitute notice to a purchaser thereof of any rights or equities of such person in the goods.

Carrier to deliver goods on demand—Conditions—Lawful excuse.

Sec. 8. That a carrier, in the absence of some lawful excuse, is bound to deliver goods upon a demand made either by the consignee named in the bill for the goods or, if the bill is an order bill, by the holder thereof, if such a demand is accompanied by—

(a) An offer in good faith to satisfy the carrier's lawful lien upon the goods;

(b) Possession of the bill of lading and an offer in good faith to surrender, properly indorsed, the bill which was issued for the goods, if the bill is an order bill; and

(c) A readiness and willingness to sign, when the goods are delivered, an acknowledgment that they have been delivered, if such signature is requested by the carrier.

In case the carrier refuses or fails to deliver the goods, in compliance with a demand by the consignee or holder so accompanied, the burden shall be upon the carrier to establish the existence of a lawful excuse for such refusal or failure.

To whom carrier shall deliver goods.

Sec. 9. That a carrier is justified, subject to the provisions of the three following sections, in delivering goods to one who is—

(a) A person lawfully entitled to the possession of the goods, or

(b) The consignee named in a straight bill for the goods, or

(c) A person in possession of an order bill for the goods, by the terms of which the goods are deliverable to his order; or which has been indorsed to him, or in blank by the consignee, or by the mediate or immediate indorsee of the consignee.

Liability for unlawful delivery—Exceptions.

Sec. 10. That where a carrier delivers goods to one who is not lawfully entitled to the possession of them, the carrier shall be liable to anyone having a right of property or possession in the goods if he delivered the goods otherwise than as authorized by subdivisions (b) and (c) of the preceding section; and, though he delivered the goods as authorized by either of said subdivisions, he shall be so liable if prior to such delivery he—

(a) Had been requested, by or on behalf of a person having a right of property or possession in the goods, not to make such delivery, or

(b) Had information at the time of the delivery

that it was to a person not lawfully entitled to the possession of the goods.

Such request or information, to be effective within the meaning of this section, must be given to an officer or agent of the carrier, the actual or apparent scope of whose duties includes action upon such a request or information, and must be given in time to enable the officer or agent to whom it is given, acting with reasonable diligence, to stop delivery of the goods.

Failure to deliver goods.

Sec. 11. That except as provided in section twenty-six, and except when compelled by legal process, if a carrier delivers goods for which an order bill had been issued, the negotiation of which would transfer the right to the possession of the goods, and fails to take up and cancel the bill, such carrier shall be liable for failure to deliver the goods to anyone who for value and in good faith purchases such bill, whether such purchaser acquired title to the bill before or after the delivery of the goods by the carrier and notwithstanding delivery was made to the person entitled thereto.

Delivery of part of the goods.

Sec. 12. That except as provided in section twenty-six, and except when compelled by legal process, if a carrier delivers part of the goods for

which an order bill had been issued and fails either—

(a) To take up and cancel the bill, or

(b) To place plainly upon it a statement that a portion of the goods has been delivered with a description which may be in general terms either of the goods or packages that have been so delivered or of the goods or packages which still remain in the carrier's possession, he shall be liable for failure to deliver all the goods specified in the bill to anyone who for value and in good faith purchases it, whether such purchaser acquired title to it before or after the delivery of any portion of the goods by the carrier, and notwithstanding such delivery was made to the person entitled thereto.

Alteration of a bill.

Sec. 13. That any alteration, addition, or erasure in a bill after its issue without authority from the carrier issuing the same, either in writing or noted on the bill, shall be void, whatever be the nature and purpose of the change, and the bill shall be enforceable according to its original tenor.

Lost, stolen, or destroyed bill—Delivery of goods under order of court.

Sec. 14. That where an order bill has been lost, stolen, or destroyed, a court of competent jurisdiction may order the delivery of the goods upon satis-

factory proof of such loss, theft, or destruction and upon the giving of a bond, with sufficient surety, to be approved by the court, to protect the carrier or any person injured by such delivery from any liability or loss incurred by reason of the original bill remaining outstanding. The court may also in its discretion order the payment of the carrier's reasonable costs and counsel fees: Provided, a voluntary indemnifying bond without order of court shall be binding on the parties thereto.

The delivery of the goods under an order of the court, as provided in this section, shall not relieve the carrier from liability to a person to whom the order bill has been or shall be negotiated for value without notice of the proceedings or of the delivery of the goods.

Liability under "duplicates."

Sec. 15. That a bill, upon the face of which the word "duplicate" or some other word or words indicating that the document is not an original bill is placed, plainly shall impose upon the carrier issuing the same the liability of one who represents and warrants that such bill is an accurate copy of an original bill properly issued, but no other liability.

Carrier's title to goods.

Sec. 16. That no title to goods or right to their possession asserted by a carrier for his own benefit

shall excuse him from liability for refusing to deliver the goods according to the terms of a bill issued for them, unless such title or right is derived directly or indirectly from a transfer made by the consignor or consignee after the shipment, or from the carrier's lien.

Different claimants.

Sec. 17. That if more than one person claim the title or possession of goods, the carrier may require all known claimants to interplead, either as a defense to an action brought against him for nondelivery of the goods or as an original suit, whichever is appropriate.

Claimants may interplead.

Sec. 18. That if some one other than the consignee or the person in possession of the bill has a claim to the title or possession of the goods, and the carrier has information of such claim, the carrier shall be excused from liability for refusing to deliver the goods, either to the consignee or person in possession of the bill or to the adverse claimant, until the carrier has had a reasonable time to ascertain the validity of the adverse claim or to bring legal proceedings to compel all claimants to interplead.

Defenses against holders of bills.

Sec. 19. That except as provided in the two preceding sections and in section nine, no right or title

of a third person, unless enforced by legal process, shall be a defense to an action brought by the consignee of a straight bill or by the holder of an order bill against the carrier for failure to deliver the goods on demand.

When goods are loaded by a carrier.

Sec. 20. That when goods are loaded by a carrier such carrier shall count the packages of goods, if package freight, and ascertain the kind and quantity if bulk freight, and such carrier shall not, in such cases, insert in the bill of lading or in any notice, receipt, contract, rule, regulation, or tariff, "Shipper's weight, load, and count," or other words of like purport, indicating that the goods were loaded by the shipper and the description of them made by him or in case of bulk freight and freight not concealed by packages the description made by him. If so inserted, contrary to the provisions of this section, said words shall be treated as null and void and as if not insterted therein.

When goods are loaded by a shipper—Conditions—Shipper's scales.

Sec. 21. That when package freight or bulk freight is loaded by a shipper and the goods are described in a bill of lading merely by a statement of marks or labels upon them or upon packages containing them, or by a statement that the goods are

said to be goods of a certain kind or quantity, or in a certain condition, or it is stated in the bill of lading that packages are said to contain goods of a certain kind or quantity or in a certain condition, or that the contents or condition of the contents of packages are unknown, or words of like purport are contained in the bill of lading, such statements, if true, shall not make liable the carrier issuing the bill of lading, although the goods are not of the kind or quantity or in the condition which the marks or labels upon them indicate, or of the kind or quantity or in the condition they were said to be by the consignor. The carrier may also by inserting in the bill of lading the words "Shipper's weight, load, and count," or other words of like purport indicate that the goods were loaded by the shipper and the description of them made by him; and if such statement be true, the carrier shall not be liable for damages caused by the improper loading or by the nonreceipt or by the misdescription of the goods described in the bill of lading: *Provided, however,* Where the shipper of bulk freight installs and maintains adequate facilities for weighing such freight, and the same are available to the carrier, then the carrier, upon written request of such shipper and when given a reasonable opportunity so to do, shall ascertain the kind and quantity of bulk freight within a reasonable time after such written request, and the carriers shall not in such cases insert in the

bill of lading the words "Shipper's weight," or other words of like purport, and if so inserted contrary to the provisions of this section, said words shall be treated as null and void and as if not inserted therein.

Liability of carrier.

Sec. 22. That if a bill of lading has been issued by a carrier or on his behalf by an agent or employee the scope of whose actual or apparent authority includes the receiving of goods and issuing bills of lading therefor for transportation in commerce among the several States and with foreign nations, the carrier shall be liable to (a) the owner of goods covered by a straight bill subject to existing right of stoppage in transitu or (b) the holder of an order bill, who has given value in good faith, relying upon the description therein of the goods, for damages caused by the nonreceipt by the carrier of all or part of the goods or their failure to correspond with the description thereof in the bill at the time of its issue.

Garnishment.

Sec. 23. That if goods are delivered to a carrier by the owner or by a person whose act in conveying the title to them to a purchaser for value in good faith would bind the owner, and an order bill is issued for them, they can not thereafter, while in

the possession of the carrier, be attached by garnishment or otherwise or be levied upon under an execution unless the bill be first surrendered to the carrier or its negotiation enjoined. The carrier shall in no such case be compelled to deliver the actual possession of the goods until the bill is surrendered to him or impounded by the court.

Injunction.

Sec. 24. That a creditor whose debtor is the owner of an order bill shall be entitled to such aid from courts of appropriate jurisdiction by injunction and otherwise in attaching such bill or in satisfying the claim by means thereof as is allowed at law or in equity in regard to property which cannot readily be attached or levied upon by ordinary legal process.

Carrier's lien.

Sec. 25. That if an order bill is issued the carrier shall have a lien on the goods therein mentioned for all charges on those goods for freight, storage, demurrage and terminal charges, and expenses necessary for the preservation of the goods or incident to their transportation subsequent to the date of the bill and all other charges incurred in transportation and delivery, unless the bill expressly enumerates other charges for which a lien is claimed. In such case there shall also be a lien for the charges enumerated so far as they are allowed by law and the contract between the consignor and the carrier.

Bill for goods sold under carrier's lien.

Sec. 26. That after goods have been lawfully sold to satisfy a carrier's lien, or because they have not been claimed, or because they are perishable or hazardous, the carrier shall not thereafter be liable for failure to deliver the goods themselves to the consignee or owner of the goods, or to a holder of the bill given for the goods when they were shipped, even if such bill be an order bill.

Negotiation by delivery.

Sec. 27. That an order bill may be negotiated by delivery where, by the terms of the bill, the carrier undertakes to deliver the goods to the order of a specified person, and such person or a subsequent indorsee of the bill has indorsed it in blank.

Negotiation by indorsement.

Sec. 28. That an order bill may be negotiated by the indorsement of the person to whose order the goods are deliverable by the tenor of the bill. Such indorsement may be in blank or to a specified person. If indorsed to a specified person, it may be negotiated again by the indorsement of such person in blank or to another specified person. Subsequent negotiation may be made in like manner.

Existing equities under straight bill.

Sec. 29. That a bill may be transferred by the holder by delivery, accompanied with an agreement,

express or implied, to transfer the title to the bill or to the goods represented thereby. A straight bill cannot be negotiated free from existing equities, and the indorsement of such a bill gives the transferee no additional right.

Bill negotiable by possessor.

Sec. 30. That an order bill may be negotiated by any person in possession of the same, however such possession may have been acquired, if by the terms of the bill the carrier undertakes to deliver the goods to the order of such person, or if at any time of negotiation the bill is in such form that it may be negotiated by delivery.

Title to goods.

Sec. 31. That a person to whom an order bill has been duly negotiated acquires thereby—

(a) Such title to the goods as the person negotiating the bill to him had or had ability to convey to a purchaser in good faith for value, and also such title to the goods as the consignee and consignor had or had power to convey to a purchaser in good faith for value; and

(b) The direct obligation of the carrier to hold possession of the goods for him according to the terms of the bill as fully as if the carrier had contracted directly with him.

Transferee's title—Notification to carrier—Lawful notification.

Sec. 32. That a person to whom a bill has been transferred, but not negotiated, acquires thereby as against the transferor the title to the goods, subject to the terms of any agreement with the transferor. If the bill is a straight bill such person also acquires the right to notify the carrier of the transfer to him of such bill and thereby to become the direct obligee of whatever obligations the carrier owed to the transferor of the bill immediately before the notification.

Prior to the notification of the carrier by the transferor or transferee of a straight bill the title of the transferee to the goods and the right to acquire the obligation of the carrier may be defeated by garnishment or by attachment or execution upon the goods by a creditor of the transferor, or by a notification to the carrier by the transferor or a subsequent purchaser from the transferor of a subsequent sale of goods by the transferor.

A carrier has not received notification within the meaning of this section unless an officer or agent of the carrier, the actual or apparent scope of whose duties includes action upon such a notification, has been notified; and no notification shall be effective until the officer or agent to whom it is given has had time, with the exercise of reasonable diligence, to

communicate with the agent or agents having actual possession or control of the goods.

Compelling indorsement.

Sec. 33. That where an order bill is transferred for value by delivery, and the indorsement of the transferor is essential for negotiation, the transferee acquires a right against the transferor to compel him to indorse the bill, unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made. This obligation may be specifically enforced.

Warranties.

Sec. 34. That a person who negotiates or transfers for value a bill by indorsement or delivery, unless a contrary intention appears, warrants—

(a) That the bill is genuine;

(b) That he has a legal right to transfer it;

(c) That he has knowledge of no fact which would impair the validity or worth of the bill;

(d) That he has a right to transfer the title to the goods, and that the goods are merchantable or fit for a particular purpose whenever such warranties would have been implied if the contract of the parties had been to transfer without a bill the goods represented thereby.

Liability of indorser.

Sec. 35. That the indorsement of a bill shall not make the indorser liable for any failure on the part of the carrier or previous indorsers of the bill to fulfill their respective obligations.

Pledgee's warranty.

Sec. 36. That a mortgagee or pledgee or other holder of a bill for security who in good faith demands or receives payment of the debt for which such bill is security, whether from a party to a draft drawn for such debt or from any other person, shall not be deemed by so doing to represent or warrant the genuineness of such bill or the quantity or quality of the goods therein described.

Validity of negotiation.

Sec. 37. That the validity of the negotiation of a bill is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the bill was deprived of the possession of the same by fraud, accident, mistake, duress, loss, theft, or conversion if the person to whom the bill was negotiated, or a person to whom the bill was subsequently negotiated gave value therefor in good faith, without notice of the breach of duty, or fraud, accident, mistake, duress, loss, theft, or conversion.

Subsequent negotiation.

Sec. 38. That where a person, having sold, mortgaged, or pledged goods which are in a carrier's possession and for which an order bill has been issued, or having sold, mortgaged, or pledged the order bill representing such goods, continues in possession of the order bill, the subsequent negotiation thereof by that person under any sale, pledge, or other disposition thereof to any person receiving the same in good faith, for value and without notice of the previous sale, shall have the same effect as if the first purchaser of the goods or bill had expressly authorized the subsequent negotiation.

Seller's lien—Stoppage in transitu.

Sec. 39. That where an order bill has been issued for goods no seller's lien or right of stoppage in transitu shall defeat the rights of any purchaser for value in good faith to whom such bill has been negotiated, whether such negotiation be prior or subsequent to the notification to the carrier who issued such bill of the seller's claim to a lien or right of stoppage in transitu. Nor shall the carrier be obliged to deliver or justified in delivering the goods to an unpaid seller unless such bill is first surrendered for cancellation.

Rights of lien holder.

Sec. 40. That, except as provided in section thirty-nine, nothing in this act shall limit the rights

and remedies of a mortgagee or lien holder whose mortgage or lien on goods would be valid, apart from this act, as against one who for value and in good faith purchased from the owner, immediately prior to the time of their delivery to the carrier, the goods which are subject to the mortgage or lien and obtained possession of them.

Forging or counterfeiting bills—Penalty.

Sec. 41. That any person who, knowingly or with intent to defraud, falsely makes, alters, forges, counterfeits, prints or photographs any bill of lading purporting to represent goods received for shipment among the several States or with foreign nations, or with like intent utters or publishes as true and genuine any such falsely altered, forged, counterfeited, falsely printed or photographed bill of lading, knowing it to be falsely altered, forged, counterfeited, falsely printed or photographed, or aids in making, altering, forging, counterfeiting, printing or photographing, or uttering or publishing the same, or issues or aids in issuing or procuring the issue of, or negotiates or transfers for value a bill which contains a false statement as to the receipt of the goods, or as to any other matter, or who, with intent to defraud, violates, or fails to comply with, or aids in any violation of, or failure to comply with any provision of this act, shall be guilty of a misdemeanor, and, upon conviction, shall be punished

for each offense by imprisonment not exceeding five years, or by a fine not exceeding $5,000, or both.

Definitions.

Sec. 42. First. That in this act, unless the context of subject matter otherwise requires—

"Action" includes counterclaim, set-off, and suit in equity.

"Bill" means bill of lading governed by this act.

"Consignee" means the person named in the bill as the person to whom delivery of the goods is to be made.

"Consignor" means the person named in the bill as the person from whom the goods have been received for shipment.

"Goods" means merchandise or chattels in course of transportation or which have been or are about to be transported.

"Holder" of a bill means a person who has both actual possession of such bill and a right of property therein.

"Order" means an order by indorsement on the bill.

"Person" includes a corporation or partnership, or two or more persons having a joint or common interest.

To "purchase" includes to take as mortgagee and to take as pledgee.

"State" includes any Territory, District, insular possession, or isthmian possession.

Not retroactive.

Sec. 43. That the provisions of this act do not apply to bills made and delivered prior to the taking effect thereof.

Sections severable.

Sec. 44. That the provisions and each part thereof and the sections and each part thereof of this act are independent and severable, and the declaring of any provision or part thereof, or provisions or part thereof, or section or part thereof, or sections or part thereof, unconstitutional shall not impair or render unconstitutional any other provision or part thereof or section or part thereof.

Effective date.

Sec. 45. That this act shall take effect and be in force on and after the first day of January next after its passage.

APPENDIX C

Time Charter

TIME CHARTER.

(The figures in parentheses refer to the appropriate sections of the text.)

This Charter Party made and concluded upon in the City of New York, the.....day of..... 19.. Between.....Agents for Owners of the good Steamship .....of.....of..... tons gross register, and.....tons net register, ...classed (1) .....at (21)..... and.....Charterers of the City of.....

Witnesseth, That the said Owners agree to let, and the said Charterers agree to hire the said Steamship from the time of delivery, for.....(2) Charterers to have liberty to sublet the Steamer for all or any part of the time covered by this Charter. (20)

Steamer to be placed at the disposal of the Charterers, at.....in such dock or at such wharf or place (where she may always safely lie afloat, at all times of tide), as the Charterers may direct, and being, on her delivery ready to receive cargo, and tight, staunch, strong (3) and in every way fitted for the service, having water ballast, steam winches and boiler with capacity to run all the steam winches at once and at the same time (and with full complement of officers, seamen, engineers and firemen

for a vessel of her tonnage), to be employed in carrying usual lawful merchandise (4) including petroleum or its products, in cases, and passengers so far as accommodations will allow (but any expense necessary to fit the steamer to comply with United States Passenger Inspection laws to be borne by Charterers) between safe ports (5) in the following limits,.....

as the Charterers or their Agents shall direct, on the following conditions:

1. That the Owners shall provide and pay for all provisions, wages and Consular shipping and discharging fees of the Captain, Officers, Engineers, Firemen and Crew; shall pay for the insurance of the vessel (6) also for all the cabin, deck, engine-room and other necessary stores, and maintain her in a thoroughly efficient state in hull and machinery for and during the service.

2. That the Charterers shall provide and pay for all the Coal, Fresh Water, Port Charges, Pilotages, Agencies, Commissions, Consular Charges (excepting those pertaining to the Captain, Officers or Crew), and all other Charges whatsoever, except those before stated. (7)

Charterers are to provide necessary dunnage and shifting boards, but Owners to allow them the use

of the dunnage and shifting boards already aboard Steamer.

3. That the Charterers shall accept and pay for all Coal or Fuel Oil in the Steamer's Bunkers and the Owners shall, on expiration of this Charter Party, pay for all Coal or Fuel Oil left in the Bunkers, at the current market price at the respective Ports where she is delivered to them.

4. That the Charterers shall pay for the use and hire of the said Vessel.....per Calendar Month, commencing on and from the day of her delivery, as aforesaid, and at and after the same rate for any part of a month; hire to continue until her delivery in like good order and condition to the Owners (unless lost) at.....(2)

5. That should the Steamer be on her voyage towards the port of return delivery at the time a payment of hire becomes due, said payment shall be made for such a length of time as the owners or their agents, and Charterers, or agents, may agree upon as the estimated time necessary to complete the voyage, and when the steamer is delivered to owner's agents any difference shall be refunded by steamer or paid by Charterers, as the case may require.

6. Payment of said hire to be made in cash, ...monthly, in advance, or as agreed, and in default of such payment the owners shall have the faculty of withdrawing the said Steamer from the

service of the Charterers, without prejudice to any claim they (the owners) may otherwise have on the Charterers, in pursuance of this Charter. (8)

7. That the cargo or cargoes be laden and/or discharged in any dock or at any wharf or place that the Charterer's or their Agents may direct, provided the Steamer can always safely lie afloat at any time of tide.

8. That the whole reach of the Vessel's Holds, and usual places of loading and accommodations of the Ship (not more than she can reasonably stow and carry), shall be at the Charterer's disposal, reserving only proper and sufficient space for Ship's officers, crew, tackle, apparel, furniture, provisions, stores and fuel. (9)

9. That the Captain shall prosecute his voyages with the utmost despatch, and shall render all customary assistance with Ship's crew and boats. The Captain (although appointed by the Owners), shall be under the orders and direction of the Charterers as regards employment, agency, or other arrangements (10) and the Charterers hereby agree to indemnify the owners from all consequences or liabilities that may arise from the Captain signing Bills of Lading or otherwise complying with the same. (11)

10. That if the Charterers shall have reason to be dissatisfied with the conduct of the Captain, Officers or Engineers, the Owners shall on receiving particu-

lars of the complaint, investigate the same, and, if necessary, make a change in the appointments.

11. That the Charterers shall have permission to appoint a Supercargo, who shall accompany the steamer and see that voyages are prosecuted with the utmost despatch. He is to be furnished, free of charge, with first-class accommodations, and same fare as provided for Captain's table.

12. That the Master shall be furnished from time to time with all requisite instructions and sailing directions in writing and shall keep a full and correct Log of the voyage or voyages which are to be patent to the Charterers or Agents.

13. That the Master shall use all diligence in caring for the ventilation of the cargo. (12)

14. That the Charterers shall have the option of continuing this charter for a further period of .....on giving notice thereof to the Owners or their Agents.....days previous to the expiration of the first-named term, or any declared option.

15. That if required by Charterers, time not to commence before.....and should Steamer not be ready for delivery on or before..... Charterers or their Agents to have the option of cancelling this Charter at any time not later than the day of Steamer's readiness. (22)

16. That in the event of the loss of time from deficiency of men or stores, breakdown of machinery,

stranding, or damage preventing the working of the vessel for more than twenty-four consecutive working hours, the payment of hire shall cease until she be again in an efficient state to resume her service; but should the Vessel be driven into port or to anchorage by stress of weather or from any accident to cargo, such detention or loss of time shall be at the Charterer's risk and expense. (13)

17. That should the Vessel be lost, freight paid in advance and not earned (reckoning from the date of her loss) shall be returned to the Charterers. The act of God, enemies, fire, restraint of Princes, Rulers and People, and all dangers and accidents of the Seas, Rivers, Machinery, Boilers and Steam Navigation, and errors of Navigation throughout this Charter Party, always mutually excepted. (14)

18. That should any dispute arise between Owners and the Charterers, the matter in dispute shall be referred to three persons at New York, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them, shall be final, and for the purpose of enforcing any award, this agreement may be made a rule of the Court. (15)

19. That the Owners shall have a lien upon all cargoes, and all sub-freights for any amounts due under this Charter, and the Charterers to have a lien on the Ship for all moneys paid in advance and not earned. (16)

20. All derelicts, salvage and towage to be for Owners' and Charterers' equal benefit after deducting expenses incident thereto, and the settlement of such claim shall be attended to by Owners, General average, if any, to be according to York-Antwerp Rules, 1890.

21. That as the Steamer may be from time to time employed in tropical waters during the term of this Charter, Steamer is to be docked, bottom cleaned and painted whenever Charterers and Master think necessary, at least once in every six months, and payment of the hire to be suspended until she is again in proper state for the service. **(17)**

22. Steamer to work night and day if required by Charterers, and all steam winches to be at Charterer's disposal during loading and discharging, and Charterers to provide men to work same both day and night as required. Charterers agree to pay for all night work, at the current local rate. **(19)**

23. That the Owners are to provide rope, falls, slings and blocks necessary to handle ordinary cargo up to two tons (of 2240 pounds each) in weight. **(18)**

24. It is also mutually agreed that this Charter is subject to all the terms and provisions of and all the exemptions from liability contained in the Act of Congress of the United States approved on the 13th day of February, 1893, and entitled "An Act relating to Navigation of Vessels, etc." **(The Harter Act, secs. 62 to 68, printed in full as Appendix A.)**

25. Penalty for non-performance of this Contract, estimated amount of damages.

26. A commission of.....per cent. on the estimated amount of Freight is due and payable by Owners upon signing this Charter Party to Steamship lost or not lost, and also upon any continuation or extension of this Charter. (34) All re-charters to be made through subject to the usual commission.

Witness to the signature of

Witness to the signature of

Agents.

We Hereby Certify the above to be a true copy of the original stamped Charter Party in our possession.

Brokers.

APPENDIX D

Net Grain Charter

NET GRAIN CHARTER.

(The numbers in parentheses refer to the appropriate sections of the text.)

.....

It is this day mutually agreed between..... Agents for Owners of the Steamship..... of.....tons net register, British measurement; classed **(1)** .....in.....and .....and.....Charterers, as follows:.....

1.—That the said steamship being tight, staunch and strong, and in every way fitted for the voyage (and according to Builder's scale and plan, which Owners believe to be correct, but do not guarantee, able to carry.....tons (2240 lbs.) of wheat or maize, in addition to necessary bunker coal, and having.....cubic feet grain space, available for such cargo), shall proceed to.....for orders, the same to be given at once by Charterers on receipt of the Captain's telegram advising vessel's arrival there; to load at..... according to custom of port, a full complete cargo of wheat and/or maize, and/or other lawful mechandise, including deckload at shipper's risk which Charterers bind themselves to furnish, and being so loaded shall therewith proceed, as ordered when

signing bills of lading, to a safe port (5, 24) in the United Kingdom or Continent, between Bordeaux and Hamburg, both inclusive (Rouen excluded), or.....or so near thereunto as she may safely get (24, 36) and there, always afloat, deliver the cargo as customary, at such wharf, dock or other safe place as Charterers Agents may direct on arrival in accordance with Bills of Lading; in consideration whereof the vessel shall be paid freight (28) as follows:

....shillings....pence, Sterling, per ton, if to a port in the United Kingdom or Continent, between Bordeaux and Hamburg, both inclusive (Rouen excluded)
....shillings....pence, Sterling, per ton, if to.....
....shillings....pence, Sterling, per ton, if to.....
.....

2.—Charterers agree to load the vessel to full draft allowed by Underwriters Surveyors, failing which they are to pay dead-freight for the number of tons short-shipped as shown by the excess buoyancy. (32)

3.—Steamer to have liberty to sail with or without pilots, and to tow and assist vessels in all situations (69) also to coal at Norfolk or Newport News, in which case Charterers or their agents have the option of giving orders there; said orders to be

given within 12 hours of arrival, or lay days to count, and for purposes of Freight to be considered as given on signing Bills of Lading. Captain to give written notice before signing Bills of Lading whether he calls for coal or not, and at which coaling station. Steamer to have liberty to coal at a port in the United Kingdom or Copenhagen, if ordered to Denmark, Sweden or the Baltic; or at Gibraltar, if ordered to the Mediterranean or Adriatic.

4.—Should the Steamer be ordered to discharge at a port on the Continent, excepting Rouen, where there is not sufficient water under normal conditions, for the Steamer to enter first tide after arrival, and to lie always afloat, lay days are to count from 24 hours after notice of arrival at nearest safe customary anchorage, and any lighterage incurred to reach the port of discharge is to be at the expense and risk of the receiver of the cargo, any custom of the port to the contrary, notwithstanding. **(36)**

5.—Should the Steamer be ordered to a port of discharge in the Sound, Sweden, Denmark or the Baltic, inaccessible by reason of ice on the Steamer's arrival, the Master shall have the option of waiting until the port is again open, or of proceeding to the nearest safe open port or roadstead (telegraphing his arrival there to Charterers), where he shall receive fresh orders for an open and accessible port of discharge within said countries or in the United Kingdom or Continent, as above, within 24 hours of

arrival or lay days to count. If so ordered, the Steamer shall receive the same Freight as if she had discharged at the port to which she was originally ordered.

6.—Freight payable per ton of 2240 lbs., delivered on right delivery of cargo (28) in cash, if at a port in the United Kingdom, or at current rate of exchange for Banker's short sight bills on London if in any other country.

7.—Charterers to have the privilege of designating wharves, or other safe places for loading or discharging. The cargo to be brought to, and taken from alongside the Steamer, at Merchant's risk and expense. Steamer to supply steam and Winchmen to drive winches, and to give use of necessary gear, also to load or discharge at night, on Sunday or holidays or on day when notice is given if required by Charterers such time not counting, they paying all extra expenses and labor incurred including overtime of Winchmen.

8.—Cash for Captain's ordinary disbursements at port of loading to be advanced, if required, Steamer paying two-and-a-half per cent. commission and cost of insurance thereon, the amount of advance to be covered by Captain's draft, payable three days after ship's arrival at port of discharge out of freight and on which the draft shall form a lien.

9.—Charterers are to load, stow, and trim the cargo at their own expense, under the direction of

the Master, but they shall not be responsible for improper stowage. Charterers to pay all port charges incidental to the outward cargo at loading port or ports, including elevating, stevedore, wharfage and tarpaulins, and to provide and fill sacks required to secure bulk grain, also dunnage mats, if required, and to provide an agent for Custom House business, but owners to pay all port and other charges at loading port until steamer arrives at loading berth.

10.—Charterer's Agents to pay cost of discharging cargo, pilotage, and all port charges incidental to their cargo at the discharging port to which Steamer may be ordered and to provide an Agent for the Custom House business, free of commission. If owners employ tally clerks for receiving or delivering cargo, Charterers tally clerks to have the preference at equal rates.

11.—Charterers to have use of any dunnage or mats, etc., as may be aboard.

12.—The Steamer shall be consigned to Charterers' Agents at ports of loading and discharge, and shall employ their Broker to attend to the Ship's business free of commission.

13.—The Captain shall sign Bills of Lading or Master's Receipts as and when presented without prejudice or reference to this Charter-party and any difference between the amount of freight by the Bills of Lading and this Charter-party to be settled at

port of loading before sailing as customary. **(25, 26)**

14.—Lay days at port or ports of loading are not to count before the.....next, unless with Charterers written consent and to commence on the day following receipt by Charterers' Agents of Captain's written notice of readiness, accompanied by Surveyor's Certificate. Should the Steamer not be ready to load on or before noon of the..... next, the Charterers have the option of cancelling this Charter-party. **(22)**

Lay days at port or ports of discharge to commence on the day following receipt by Charterers' Agents of Captain's written notice of readiness. **(38)**

15.—If the Steamer be not sooner dispatched one running day **(40)** (Sundays and holidays excepted) per 100 tons net register shall be allowed the Charterers for loading and discharging. Should the cargo not be delivered to Vessel at loading ports and/or discharged at port of destination within the specified time, for each and every day over and above said lay days, Charterers are to pay, day by day, the sum of four pence per net register ton per day demurrage, any detention through Quarantine to Vessel or cargo not to count in lay days. **(See secs. 39 to 43.)** If sooner dispatched, steamer to pay £10 for each day saved. **(57)**

16.—The clauses herein regarding payment of port charges, stevedores, etc., at ports of loading and discharge refer only to such charges as are ordinarily incurred, any extra expenses caused by the steamer being under average, are to be adjusted in the usual way. All spaces to be placed at Charterers' disposal which would be used for cargo, if loading for owner's account, and where cargo has been carried before. **(9)**

17.—If the cargo cannot be delivered, loaded or discharged by reason of a strike or lockout of any class of workmen or stoppage of labor or lighters or anything beyond the control of the Charterers or Receivers essential to the delivery, loading or discharging of the cargo, the days for loading and discharging shall not count during the continuance of such strike, stoppage or lockout. A strike of the Receiver's men only shall not exonerate him from any demurrage for which he may be liable under this Charter if by the use of reasonable diligence he could have obtained other suitable labor or lighters. **(43 to 47)**

18.—If the Nation under whose flag the Vessel sails be at war, whereby her free navigation is endangered thereby causing extra or prohibitory insurance on the cargo, the Charterers shall have the privilege of cancelling this Charter-party at the last outward port of sailing, or at any subsequent period when the difficulty may arise previous to

cargo being shipped. Charterers or stevedores shall not be responsible for any damage occurring while loading or discharging cargo by reason of any defect in Vessel's machinery or tackle, nor for neglect on the part of Vessel's officers or crew.

19.—The act of God, perils of the sea (70), fire (71) on board in hull or craft, or on shore, barratry of the Master and Crew, enemies, pirates and thieves (74), arrests and restraints of princes (72), rulers and people, collisions, stranding, and other accidents of navigation excepted, even when occasioned by negligence, default or error in judgment of the Pilot, Master, Mariners or other servant of the Shipowners. Not answerable for any loss or damage arising from explosion, bursting of boilers, breakage of shafts, or any latent defect in the machinery or hull not resulting from want of due diligence by the Owners of the Ship, or any of them, or by the Ship's Husband or Manager. General average shall be adjusted according to York-Antwerp Rules, 1890.

It is also mutually agreed that this shipment is subject to all the terms and provisions of and all the exemptions from liability contained in the Act of Congress of the United States, approved on the 13th day of February, 1893, and entitled, "An Act relating to Navigation of Vessels," etc., and Bills of Lading are to be signed in conformity with said

Act. **(The Harter Act, secs. 62 to 68, printed in full as Appendix A.)**

20.—Charterers' liability to cease when the cargo is shipped, except for expenses under clause 10, the Owner or Master of the Steamer having an absolute lien upon the cargo for the recovery and payment of all Freight, Dead Freight and Demurrage. **(27)**

21.—If any dispute arises the same to be settled by two referees, one appointed by the Captain and one by the Charterers or their Agents, and if necessary, the Arbitrators to appoint an Umpire. The decision of the Arbitrators or Umpire, as the case may be, shall be final, and any party attempting to revoke this submission to arbitration without leave of a court, shall be liable to pay to the other, or others, as liquidated damages, the estimated amount of the chartered freight. **(15)**

22.—Owners shall furnish Charterers with a copy of vessel's scale and plan showing cubic capacities of all holds and spaces upon signing of this Charter-party.

23.—Owners or Master shall cable..... Vessel's departure from last port to enter upon this Charter, and they shall telegraph likewise, at once, if any accident happens to the Vessel while under this Contract.

24.—Penalty for non-performance of this agreement to be proven damages, not exceeding estimated amount of freight. **(33)**

In witness whereof we have hereunto set our hands this day

.....
.....
.....

Signed in the presence of.....
.....

We certify this to be a true copy of the original Charter Party in our possession.

.....

(The Brokerage of 5 per cent. on the gross amount of freight, dead freight and demurrage due under this Charter-party, Steamer lost or not lost shall be paid by Owners to.....) **(34)**

APPENDIX E

Coal Charter Party

Welsh Form 1914

COAL CHARTER PARTY.

Welsh Form—1914

(The numbers in parentheses refer to the appropriate sections of the text.)

New York,

It is this day Mutually Agreed, between..... Agents for Owners of the.....Steamship .....of.....net tons register or thereabouts, classed **(1)** .....now.....**(21)** and.....Charterers.

1. That the said Steamer being tight, staunch, and strong, **(3)** and every way fitted for the Voyage, shall with all possible dispatch, sail and proceed to..... .....and there load, always afloat, in the customary manner, from the Charterers, in such Dock as may be ordered by them, a full and complete Cargo of .....Coal not exceeding..... tons, nor less than.....tons, and not exceeding what she can reasonably stow and carry, over and above her Tackle, Apparel, Provisions and Furniture; and being so loaded, shall therewith proceed with all possible dispatch, to..... or so near thereunto as she can safely get **(24, 36)** and there deliver her cargo alongside any Wharf, and/or Vessel, and/or Craft, as ordered **(35)** where she can safely deliver, always afloat, but if required

to shift, the expense of so doing to be paid by Consignees, and the time to count; on being paid Freight at the rate of.....per ton of 20 cwt. or 1,015 kilos delivered, or on Bill of Lading quantity less two per cent., at Receiver's option, to be declared in writing, before bulk is broken. If the Receiver should elect to weigh the Cargo at the port of destination, the weighing shall be done (by an official weigher) at his expense. The Owner may provide a check weigher at Steamer's expense. Should any deficiency be alleged on the authority of such weighing, it shall affect the freight only, from which no deduction shall be made for alleged shortage of cargo, any custom of the port of discharge notwithstanding, but the Owner shall furnish, if required, a Statutory Declaration by the Master and other officers that all the Cargo received on board has been delivered. The freight is in full of Trimming, and of all Port Charges, Pilotage, and Consulages on the Steamer. All Wharfage dues on the Cargo to be paid by the Charterers.

2. A sailing telegram to be sent to the Charterers or their agents on Steamer leaving her last port, or in default twenty-four hours more to be allowed for loading.

3. Steamer to load as customary and in turn with other steamers (55) commencing when written notice is given of Steamer being completely discharged of inward cargo and ballast in all her holds, and ready to load (38) such notice to be given

between business hours of 9 a. m. and 5 p. m., or 1 p. m. on Saturdays. Any time lost through riots, strikes, lockouts, or any dispute between masters and men, occasioning a stoppage of pitmen, trimmers or other hands connected with the working or delivery of the coal for which the Steamer is stemmed, or by reason of accidents to mines or machinery, obstructions on the Railway or in the Docks; or by reason of floods, frosts, fogs, storms or any cause beyond the control of the Charterers, not to be computed as part of the loading time (unless any cargo be actually loaded during such time) **(44 to 48)** If detained longer Charterers shall pay demurrage at the following rates:—For Steamers of under 1,600 tons net register, 16/8 for every running hour. For Steamer of 1,600 tons net register and over, 16/8 for every running hour for the first 72 hours, and thereafter (if detained longer) at the rate of 1/8th of a penny per net register ton for every running hour. If any dispute or difference should arise under this clause, same to be referred to three parties in the City of New York, one to be appointed by each of the parties hereto, the third by the two so chosen and their decision, or any two of them, shall be final and binding, and this agreement may, for enforcing the same, be made a rule of Court. **(15)**

4. The Cargo to be trimmed by men appointed by the Charterers at the tariff rate of the Port.

5. Steamer to take whatever bunker coals are re-

quired at loading port from Charterers at their regular contract price, Bunker Coals to be kept properly separated from the Cargo to Charterers' satisfaction at the Steamer's expense and the quantity to be endorsed on the Bills of Lading. If any Cargo is carried in a hold communicating directly with the Stokeholds, the doors to be securely fastened on the Cargo side.

6. The Bills of Lading shall be prepared in accordance with the Dock or Railway weight in the form endorsed on Charter, and shall be endorsed by the Master, Agent or Owner, weight unknown, freight and all conditions as per this Charter **(25, 26)** such Bills of Lading to be signed at the Charterers' or Shippers' Office, within twenty-four hours after the Steamer is loaded.

7. The Act of God, the King's Enemies, Restraints of Princes and Rulers **(72)** and Perils of the Seas excepted. **(70)** Also Fire **(71)**, Barratry of the Master and Crew, Pirates, Collisions, Strandings and Accidents of Navigation, or latent defects in, or accidents to, Hull and/or Machinery, and/or Boilers, always excepted, even when occasioned by the negligence, default or error in judgment of the Pilot, Master, Mariners, or other persons employed by the Shipowner, or for whose acts he is responsible, not resulting, however, in any case from want of due diligence by the Owner of the Ship, or by the Ship's Husband, or Manager. The Owners shall not be liable for any delay in the commencement or prosecu-

tion of the voyage due to a general strike or lockout of seamen or other persons necessary for the movement or navigation of the vessel. Charterers not answerable for any negligence, default, or error in judgment of Trimmers or Stevedores employed in loading or discharging the Cargo. The Steamer has liberty to call at any ports in any order, to sail without Pilots, to tow and assist vessels in distress, and to deviate for the purpose of saving life or property, and to bunker. **(69)** It is also mutually agreed that this shipment is subject to all the terms and provisions of and all the exemptions from liability contained in the Act of Congress of the United States, approved on the 13th day of February, 1893, and entitled "An Act relating to Navigating of Vessels," etc. **(The Harter Act, 62 to 68, printed in full as Appendix A.)**

8. The Cargo to be taken from alongside by Consignees at Port of Discharge, free of expense and risk to the Steamer, at the average rate of..... tons per day, weather permitting, Sundays and holidays excepted, provided Steamer can deliver it at this rate; if longer detained, Consignees to pay Steamer demurrage at the rate of fourpence per net register ton per running day (or pro rata for part thereof). Time to commence when Steamer is ready to unload and written notice given, whether in berth or not. **(35, 37, 38)** In case of strikes, lockouts, civil commotions, or any other causes or accidents beyond the control of the Consignees which prevents or

delays the discharging, such time is not to count unless the Steamer is already on demurrage. (44 to 48) Consignees to effect the discharge of the Cargo, Steamer paying.....per ton of 20 cwt., or 1,015 kilos, and providing only steam, steam-winches, winchmen, gins, and falls. Steamer to pay dispatch money to Consignees of Cargo at the rate of Ten Pounds British Sterling per day for any time saved in discharging. (57)

9. The FREIGHT to be paid.....if required by the Owner, on signing Bills of Lading (ship lost or not lost) (29) in Cash, less.....per cent., for Insurance and Interest (the Owner or his Agents giving Charterers or Shippers written notice before the Steamer commences loading, if any advance freight is required), and the remainder on right delivery of the Cargo (28) in sufficient Cash for Steamer's ordinary disbursements at current exchange, and the balance (unless otherwise arranged between the Owners and Charterers) by a good and approved Bill on London at three Months' date, or in Cash equal thereto, at Captain's option. The Receiver of the Cargo to be bound to pay freight on account during delivery, if required by the Captain. The Charterers' account at port of loading to be paid when rendered, otherwise the Charterers may deduct it on settlement of freight at port of destination (together with a charge of three per cent. to cover all charges including Insurance and interest).

10. The Steamer to be free of address at Port of

Discharge, but to pay the usual Commission of Two per cent. on the amount of Freight on signing Bills of Lading.

11. In case of Average, the same to be settled according to York-Antwerp Rules, 1890, and as if the Steamer were British. Should the Steamer put into any Port or Ports leaky or with damage, the Captain or Owner shall without delay inform the Charterers thereof. If the owner of the ship shall have exercised due diligence to make said ship in all respects seaworthy, and properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster resulting from fault or negligence of the pilot, master or crew, in the navigation or management of the ship, or from latent or other defects, or unseaworthiness of the ship, whether existing at time of shipment or at the beginning of the voyage, but not discoverable by due diligence, the consignees or owners of the cargo shall not be exempted from liability for contribution in General Average, or for any special charges incurred, but with the Shipowner, shall contribute in General Average, and shall pay such special charges, as if such danger, damage or disaster had not resulted from such fault, negligence, latent or other defect or unseaworthiness. **(78)**

12. Loading hours not to commence before 9 a. m. on.....and if Steamer be not ready in loading dock as ordered before 9 a. m. on.....

or if any wilful misrepresentation be made respecting the size, position or state of the Steamer, Charterers to have the option of cancelling this Charter, such option to be declared on notice of readiness being given. **(22)**

13. Steamer to be consigned to Charterers' Agents at both loading and discharging ports, paying an agency fee of Ten Pounds, Ten Shillings, British Sterling at each port for attending to Steamer's business.

14. The Charterers' liability shall cease as soon as the Cargo is shipped, and the advance of Freight, Dead Freight and Demurrage in Loading (if any) are paid, the owner having a lien on the Cargo for Freight, Demurrage and Average. **(27)**

15. Penalty for non-performance of this Agreement, proved damages, not exceeding the estimated amount of Freight. **(33)**

16. A commission of.....per cent. on amount of freight, dead freight and demurrage, is due from the Steamer on signing Charter party, Steamer lost or not lost, to **(34)**

(Printed in margin.)

Clause 10—Charterers have option of making the Address Commission payable at Port of Discharge.

Clause 11—Captain to Telegraph Charterers in case of putting in anywhere.

We hereby certify that the foregoing is a true and correct copy of the original Charter Party on file in our office.

APPENDIX F

Coal Charter Party

COAL CHARTER PARTY.

(Simple form of charter suitable for sailing vessel; numbers in parentheses refer to the appropriate sections of the text.)

This Charter Party, made and concluded upon in .....this.....day of .....191.. Between.....of the.....of..... of the capacity of.....tons **(1)** or thereabouts, now lying in the harbor of **(21)** .....of the first part; and.....of the second part, Witnesseth, that the said party of the first part agrees on the freighting and chartering of the whole of the said vessel (with the exception of the cabin and necessary room for the crew, and the storage of provisions, sails and cables) or sufficient room for the cargo hereinafter mentioned, unto said party of the second part, for a voyage from..... on the terms following: The said vessel shall be tight, staunch, strong, and in every way fitted for such a voyage, and receive on board during the aforesaid voyage the lawful merchandise hereinafter mentioned. The said party of the second part doth engage to provide and furnish to the said vessel a **FULL CARGO OF COAL,** and to pay said party of the first part, or agent, for the use of said vessel during the voyage aforesaid..... per ton of 2240 lbs., B/L weight delivered alongside

wharf free of commission or discount. Coal to be loaded and discharged free of expense to vessel, but vessel to trim as customary. Suitable berth free wharfage and sufficient water guaranteed both at loading and discharging berth by charterers.

It is agreed that....days (Sundays and Holidays excepted unless used on this vessel), are to be allowed for loading and discharging, both inclusive, commencing from the time the Captain reports vessel ready to receive or discharge cargo. **(35, 37, 38)**

For each and every day's detention beyond said time by default **(50)** of said party of the second part or agent, ... cents per ton on Bill of Lading weight per day and pro rata for portion of a day, shall be paid by said party of the second part, or agent, to said party of the first part, or agent. The cargo or cargoes to be received and delivered alongside, within reach of the vessel's tackles.

The Act of God, Enemies, Fire **(71)**, Restraint of Princes, Rulers and People **(72)** and all Dangers and Accidents of the Seas **(70)**, Rivers, Machinery, Boilers and Steam Navigation, and Errors of Navigation **(67)** throughout this Charter Party, always mutually excepted. **(45)**

A commission of ..... per cent. upon the gross amount of this Charter and demurrage or renewal of the same, payable by the vessel, is due to..... upon the signing hereof, vessel lost or not lost. **(34)**

To the true and faithful performance of all and every part of the foregoing agreement, we, the said parties, do hereby bind ourselves, our heirs, executors, administrators and assigns, and also the said vessel's freight, tackle and appurtenances, and the merchandise to be laden on board, each to the other, in the penal sum of the estimated amount of this Charter; (33) and the vessel holding a lien upon the cargo for freight and demurrage.

In Witness Whereof, we hereunto set our hands the day and year above written.
Signed in the presence of

.....

.....

We hereby certify that the above is a true copy of the original Charter Party now in our possession.

.....Ship Brokers

APPENDIX G
Bill of Lading

BILL OF LADING.

(The figures in parentheses refer to the appropriate sections of the text.)

Port of Destination.....

RECEIVED in apparent good order and condition **(60)** from.....to be transported by the good Steamship.....to sail from the port of NEW YORK, and bound for.....with liberty to substitute another steamer, or steamers, or to transship the goods before or after the commencement of the voyage by any other steamer, or steamers **(69)** and also with liberty to drydock with or without cargo on board, to proceed to and stay at any ports or places whatsoever, although in a contrary direction to, or out of the route to or beyond the port of discharge, once or oftener, in any order, backwards or forwards, for loading or discharging cargo, coal and passengers, or for any purpose whatsoever, and all such ports, places and sailings, shall be deemed to be included within the intended voyage (this liberty is not to be considered as restricted by any words in this contract whether written or printed, **(69)**

.....(description of the goods).....

being marked and numbered as per margin, ship-

per's weight (quality, quantity, contents, marks, gauge, weight and value unknown) **(60)** and to be delivered subject to the exceptions and conditions hereinafter mentioned in like apparent good order and condition from ship's deck (where carrier's responsibility shall cease) **(61)** subject to ship's engagements not hereby disclosed and though altering the voyage or involving a deviation therefrom, at the port of.....(or as near thereto as she may safely get) unto.....or to his or their assigns. Freight for the said goods to be paid by the shippers in New York, on delivery of Bills of Lading, in cash without deduction. **(29)**

IT IS MUTUALLY AGREED:

That the steamer shall have liberty to sail with or without pilots, and to deviate for the purpose of saving life or property, **(69)** that the carrier shall have liberty to convey goods in craft and/or lighters to and from the steamer at the risk of the owners of the goods; to transship the goods to their destination by any other steamer or steamers as often as the shipowner elects.

That the carrier shall not be liable for loss or damage occasioned by perils of the sea **(70)** or other waters and dangers of navigation of whatsoever kind, by collision, stranding, jettison or wreck; or for loss or damage due to or caused by fire from any cause or wheresoever occurring on board, in craft

or on shore (71); by barratry of the master or crew; by enemies, pirates (70), robbers or thieves, by land or sea; by theft or pilferage by any person on board, in craft or on shore whether in the employ of the shipowner or not (74); by arrest or restraint of princes, rulers or people (72); by hostilities, by riots, strikes (47, 48), or stoppage of labor or epidemics; by explosion (70); by bursting of boilers, or by steam however arising; by breakdown of shafting or machinery; by defect in any part of the hull, boilers, engines, machinery or appurtenances of the vessel; by unseaworthiness of the steamer, whether existing at time of shipment or at the beginning of the voyage, provided the owners have exercised due diligence to make the steamer seaworthy (65); by heating, frost, decay, evaporation, smell or taint from or contact with other goods, putrefaction, rust, sweat, rain or spray, change of character, drainage, leakage, breakage, vermin, (73) or by explosion of any of the goods whether shipped with or without disclosure of their nature, or any loss or damage arising from the nature of the goods or the insufficiency of packages or inaccuracy or obliterations, errors, insufficiency or absence of marks, numbers, address or description of cargo; or for land damage; or for risk of craft, hulk or transshipment; or for any loss or damage caused by the prolongation of the voyage; and that the carrier shall not be concluded as to the correctness of statements herein of quality, quantity, gauge, contents, weight and value.

That General Average shall be payable according to York-Antwerp Rules, 1890, and as to matters not therein provided for according to the usages of the Port of New York. If the owners shall have exercised due diligence to make the steamer in all respects seaworthy and to have her properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster, resulting from accidents or faults or errors in navigation, or in the management of the steamer, or from any defect in the steamer, her machinery or appurtenances, or from unseaworthiness, whether existing at the time of shipment or at the beginning of the voyage (provided the defect or the unseaworthiness was not discoverable by the exercise of due diligence), the shippers, consignees or owners of the cargo shall, nevertheless, pay salvage, and any special charges incurred in respect of the cargo, and shall contribute with the shipowner in General Average to the payment of any sacrifices, losses or expenses to a General Average nature that may be made or incurred for the common benefit, or to relieve the adventure from any common peril, all with the same force and effect, and to the same extent, as if such danger, damage or disaster had not resulted from, or been occasioned by, accidents or faults or errors in navigation, or in the management of the vessel, or any defect or unseaworthiness. **(71)**

IT IS ALSO MUTUALLY AGREED that this shipment is subject to all terms and provisions of, and all the exemptions from liability contained in the Act of Congress of the United States (the Harter Act), approved on the 13th day of February, 1893 (and entitled, An Act Relating to Navigation of Vessels, etc.). **(Sections 62 to 68, printed in full as Appendix A.)**

1.—IT IS MUTUALLY AGREED that the value of the goods receipted for above does not exceed $100 per package, unless the value be expressly stated herein and ad valorem freight paid thereon. **(76)**

2.—ALSO, that the steamer, lighter or carrier shall not be liable for articles specified in Section 4281 of the Revised Statutes of the United States, unless written notice of the true character and value thereof is given at the time of lading and entered in the Bill of Lading.

3.—ALSO, that the shippers shall be liable for any loss or damage to steamer, cargo, lighter or wharf, caused by inflammable, explosive or dangerous goods, shipped without full disclosure of their nature, whether such shipper be Principal or Agent; **(79)** and such goods may be thrown overboard or destroyed at any time without compensation.

4.—ALSO, that the carrier shall have a lien on the goods for all freights, primages and charges, and

also for all fines or damages which the steamer, lighter, or cargo may incur or suffer by reason of the incorrect or insufficient marking, numbering or addressing of packages or description of their contents. Bills of Lading must be made out in accordance with the prescriptions and regulations of Port, Customs or Consular authorities. Consular, Board of Health or other certificates required to accompany the goods are to be procured by shippers, and any detention, charges or penalties occurring to steamer or cargo, owing to the want of such certificates, are to be borne by the shippers and/or consignees, and the cargo to be subject to a lien therefor.

5.—ALSO, that in case the ship shall be prevented by quarantine from discharging the goods at the usual place of discharge or from reaching her destination, the carrier may discharge the goods into any Depot or Lazaretto, and such discharge shall be deemed a final delivery under this contract, and all the expenses thereby incurred on the goods shall be a lien thereon.

6.—ALSO, that in case of war, hostilities, insurrections, civil commotion, strikes or lockouts, disturbances, blockade or interdict of the port of discharge, warlike or naval operations or demonstrations, whether at or near the port of discharge or elsewhere in the course of the voyage, or of ice or closure by ice, or of the happening of any other

matter or event, whether of like nature to those above mentioned or otherwise, and whether existing or anticipated, before commencement of or during the voyage, which in the judgment of the Master is likely to result in damage to or loss of the vessel or give rise to risk of capture, seizure or detention of vessel and/or cargo, or of any part of the cargo, or which in his judgment may make it unsafe or imprudent for any reason to proceed on or continue the voyage, or enter or discharge cargo at the port of discharge, or which in his judgment is likely to give rise to delay or difficulty in reaching, discharging at or leaving the port of discharge, the Master shall be at liberty, in his discretion, to change to and proceed by any route direct or indirect or to deviate or to proceed or return to or stop and discharge the cargo, or any part thereof, at such other port or ports as he may consider safe or advisable, under the circumstances, and thereupon when so discharged the cargo shall be at the risk and expense of the shippers and/or receivers thereof, and the steamer, her Owners, Agents and Master shall be freed and discharged from any further responsibility in respect thereof.

7.—ALSO, that the goods are to be received by the consignee immediately the vessel is ready to discharge, and continuously at all such hours as the charge, and continuously (54) at all such hours as the Custom House or Port Authorities may give per-

mission for the ship to work, or if necessary, to discharge into lighters at the risk and expense of the Consignee. And it is expressly understood that the articles named in this Bill of Lading shall be at the risk of the Owner, Shipper, or Consignee thereof as soon as delivered from the tackle and/or deck of such steamer at her port of destination and they shall be received by the Consignee, package by package as so delivered, and if not taken away the same day by him they may (at the option of the Vessel's Agent) be sent to store or warehouse, or permitted to lie where landed at the expense and risk of the aforesaid Owner, Shipper or Consignee, and shall be subject to a lien for wharfage, rent of dock, wharf or store or any other expense that may be incurred in respect thereof. If on the arrival of the steamer at the port of delivery any of the bales or packages shipped under the Bill of Lading cannot be identified by reason of insufficiency of marks, obliteration of marks, or no marks, then in any such case, the Receivers shall take in full discharge, accord and satisfaction, any bales or packages which may be on board the steamer and be tendered them by the Owners or their Agents, notwithstanding that such bales or packages do not bear the marks and description indicated in the margin thereof. The Collector of the Port is hereby authorized to grant a general order for discharging immediately after the entry of the ship.

8.—ALSO, that in case any part of the within goods cannot be found during Ship's stay at port of destination, they are, when found, to be sent back at the Merchant's risk and Ship's expense. The ship shall not be liable for incorrect delivery unless such packages shall have been distinctly and permanently marked by the Shipper before shipment with the name of the port of destination. Goods overcarried to be returned to Consignee at Ship's expense but free from liability for any loss, depreciation or damage arising from overcarriage or from return carriage.

9.—ALSO, that in the event of claims for short delivery of, or damage to, cargo being made, the Carrier shall not be liable for more than the net invoice price plus freight and insurance, less all charges saved, and any loss or damage for which the Carrier may be liable shall be adjusted pro rata on the said basis. **(76)**

Neither the Carrier, the vessel, nor the Agents shall be liable for any claim for loss of or damage to goods in any event unless notice in writing of the claim shall have been presented to the ship's Agents at the port of discharge before the removal of the goods from the ship's custody. **(77)**

10.—ALSO, that merchandise on wharf or in lighter or other craft, shall be at Merchandise Owner's risk of loss or damage.

11.—ALSO, that the Shippers are hereby notified that this and all steamers of this Line, carry general cargo for all ports including kerosene oil and products of petroleum, spirits of turpentine, all kinds of chemical products and liquids in cans, cases, barrels or packages, and it is agreed that steamer and owners shall not be held liable for any damage to the within cargo resulting from carriage or stowage with, or proximity to, or the effect of other cargo on board.

12.—ALSO, that Glass, China, Castings and other goods of a brittle and fragile nature or unprotected pieces are carried at shipper's risk only, the steamer not to be held responsible for any breakage of or injury thereto.

13.—TRANSSHIPMENT CLAUSE:—Transshipment of cargo for ports where the ship does not call, or for shipowner's purposes, is to be at the shipowner's expense and subject to all conditions, stipulations and exceptions in the customary form of bill of lading or freight note in use at the time of the transshipment by the carrier or carriers completing the transit. The shipowner is not, and shall not be deemed to be the agent for such a carrier or carriers, nor shall the shipowner be liable in any respect whatever for any loss, damage or delay in regard to the goods after they shall have left the steamship's tackle and/or deck where the steamship's responsibility shall cease. The goods shall be forwarded as

soon as practicable, but the shipowner shall not be liable for detention and the risks and expenses of warehousing shall be borne by the goods, their owners and their consignees.

14.—PREPAID FREIGHT is to be considered as earned on shipment of the goods and is to be retained by the shipowner, vessel or cargo lost or not lost, or if there be a forced interruption or abandonment of the voyage at a port of distress or elsewhere **(29)**; and in the event of the cargo or a part of it being forwarded by vessels of the same Line, or otherwise, the cost of forwarding shall be payable by the Owners or Consignees of the goods and shall constitute a lien on the goods.

In accepting this Bill of Lading, the shipper, owner and consignee of the goods, and the holder of the Bill of Lading agree to be bound by all its stipulations, exceptions and conditions, whether written or printed, as fully as if they were all signed by such shipper, owner, consignee, or holder. **(59)**

IN WITNESS WHEREOF, the Master or Agent of said Ship hath affirmed to three Bills of Lading, all of this tenor and date, one of which being accomplished, the others to stand void.

DATED IN NEW YORK this.....day of .....19..

AGENTS FOR MASTER.

By.....

TABLE OF CASES

TABLE OF CASES

[References are to Sections.]

A SECTION

Aalholm v. Iron Ore, 23 Fed. 620.....47, 48
Abbazia, The, 127 Fed. 495..... 65
Abenaki, The, 214 Fed. 325..... 51
Acties. Thorbjorn v. Harrison, 260 Fed. 287..... 16
Ada, The, 233 Fed. 325..... 25
Ada, The, 239 Fed. 363..... 85
Adamson v. 4300 Tons Pyrites, 137 Fed. 998..... 48
Addicks v. Kainit, 23 Fed. 727..... 38
A. Denicke, The, 138 Fed. 645, C. C. A..... 85
Adler v. Galbraith, 156 Fed. 259..... 23
Aira Force S. S. Co. v. Christie, 9 Times, L. R. 104..... 6
Akties Korn-og Foderstof v. Rederi Atlanten, 250 Fed. 935, C. C. A. 15, 33
Albert Dumois, The, 54 Fed. 529..... 16
Albis v. Munson, 130 Fed. 32, affd. 139 Fed. 234..... 17
Aleppo, The, 7 Ben. 121, F. C. No. 158..... 83
Alexander v. Akties Hansa, 35 Times, L. R. 709..... 43
Aline, The, 25 Fed. 562.....73, 76
Allanwilde Trans. Co. v. Vacuum Oil Co., 248 U. S. 377, 63 L. Ed. 312..... 29
Allerton S. S. Co. v. Falk, 6 Asp. M. C. 287..... 47
Alvena, The, 74 Fed. 252..... 65
Amer. Stl. Bge. Co. v. Ches. & O. Coal Agcy. Co., 115 Fed. 669, C. C. A..... 16
Amer. Sug. Ref. Co. v. Maddock, 93 Fed. 980, C. C. A..... 60
Amer. Rfg. Co. v. Rickinson, 124 Fed. 188, C. C. A..... 67
Anderson v. Bowring, 197 Fed. 675..... 17

[References are to Sections.]

SECTION

Anderson v. Moore, 179 Fed. 68, C. C. A..... 35
Anderson v. Munson, 104 Fed. 913..... 2
Anna, The, 47 Fed. 525..... 66
Ann Richardson, The, Abb. Adm. 499, F. C. No. 410..... 30
Ansgar v. Brauer, 121 Fed. 426..... 1
Antola v. Gill, 7 Fed. 487..... 21
Antonio Zambrana, The, 70 Fed. 320.....5, 82
Appam, The, 243 Fed. 230..... 30
Arctic Bird, The, 109 Fed. 167.....29, 59, 65, 77, 83
Ardan S. S. Co. v. Thebaud, 35 Fed. 620..... 25
Ardan S. S. Co. v. Weir, L. R. 1905, A. C. 501, 11 Com. Cas. 26, 10 Asp. M. C. 135..... 56
Armament Adolf Dieppe v. Robinson, 22 Com. Cas. 300, 14 Asp. M. C. 84.....35, 38
Arno, The, 72 L. T. 121, 8 Asp. M. C. 5..... 30
Arpillao, The 241 Fed. 282..... 73
Asfar v. Blundell, L. R. (1896), 1 Q. B. 123, 8 Asp. M. C. 106, 1 Com. Cas. 185..... 28
Ashburner v Balchen, 7 N. Y. 262..... 1
Ask, The, 156 Fed. 678.....3, 85
Assoc. Portland Cement Mfrs. v. Cory, 31 Times, L. R. 442. . .....47, 72
Assyria, The, 98 Fed. 316, C. C. A.....38, 42
Astraea, The, 124 Fed. 83.....1, 10, 20
Atkins v. Fibre Co., 2 Ben. 381, F. C. No. 601, affd. 18 Wall. 272, 21 L. Ed. 841..... 5
Atl. Fruit v. Solari, 238 Fed. 217.....4, 14
Atl. S. S. Co. v. Guggenheim, 147 Fed. 103, C. C. A..... 53

B

Bacon v. Ennis, 110 Fed. 404, 114 Fed. 260..... 24
Bags of Linseed, Sears v. Wills, 1 Black 108, 17 L. Ed. 35.. 80
Bailey v. Mfrs. Lbr. Co., 224 Fed. 806.....27, 42, 43, 49

[References are to Sections.]

SECTION

Balfour v. Portland Co., 167 Fed. 1010..... 72
Balfour v. Wilkins, 5 Sawy. 429, F. C. No. 807..... 40
Banes, The, 221 Fed. 416, C. C. A.....3, 20
Baralong, The, 172 Fed. 220..... 73
Barber v. Vlasto, 104 Fed. 101..... 32
Barnstable, The, 181 U. S. 464, 45 L. Ed. 954..... 6
Barracouta, The, 40 Fed. 498..... 73
Barrell v. The Mohawk, 8 Wall. 153, 19 L. Ed. 406..... 30
Barrie v. Peruv. Corp., 2 Com. Cas. 50..... 45
Beaver, The, 219 Fed. 139, C. C. A..... 10
Bellatty v. Curtis, 41 Fed. 479..... 51
Benjamin Noble, The, 232 Fed. 382, affd. sub. nom. Capitol Trans. Co. v. Cambria Stl. Co., 249 U. S. 334..... 66
Benner Line v. Pendleton, 217 Fed. 497, C. C. A., affd. 246 U. S. 353, 62 L. Ed. 770.....10, 66, 71
Bennett v. Lingham, 31 Fed. 85..... 21
Bentsen v. Taylor, L. R. (1893), 2 Q. B. 274, 7 Asp. M. C. 385..... 1
Berengere, The, 155 Fed. 439..... 83
Bergenhus, The, Olsen v. U. S. Spg. Co., 195 Fed. 147..... 18
Bird of Paradise, The, 5 Wall. 545, 18 L. Ed. 662..... 80
Bjorkquist v. Certain Steel Rail Crop Ends, 3 Fed. 717.... 53
Bohemia, The, 38 Fed. 756.....30, 72
Bollman v. Tweedie, 150 Fed. 434.....17, 18
Bolton S. S. Co. v. Crossman, 206 Fed. 183..... 63
Bonanno v. Tweedie, 117 Fed. 991, affd. 130 Fed. 448..... 38
Booye v. Cargo of Boards, 42 Fed. 335..... 50
Boskenna Bay, The, 22 Fed. 666, 40 Fed. 91.....25, 61
Boutin v. Rudd, 82 Fed. 685, C, C. A..... 85
Bowring v. Thebaud, 42 Fed. 794, affd. 56 Fed. 521..... 66
Boyle v. Bush Terminal, 210 N. Y. 389..... 76
Bradley v. Lehigh Valley R. R., 153 Fed. 350, C. C. A..... 65
Bradley v. Newsum, 34 T. L. R. 613 (House of Lords)..... 30

[References are to Sections.]

SECTION

Bradlie v. Maryland Ins. Co., 12 Pet. 378, 9 L. Ed. 1123.... 72
Brauer v. Compania, 61 Fed. 860..... 29
Brilliant, The, 138 Fed. 743, affd. 159 Fed. 1022..... 66
British & For. Mar. Ins. Co. v. Kilgour, 184 Fed. 174..... 3
7, 10, 66
British & F. Mar. Ins. Co. v. So. Pac. Co., 72 Fed. 285, C. C. A. 30
British King, The, 89 Fed. 872..... 67
Brit. Marit. Trust v. Munson, 149 Fed. 533.....18, 19
Broken Hill Proprietary v. P. & O., 14 Asp. M. C. 116.... 69
Brooks v. Hilton Lbr. Co., 229 Fed. 708, C. C. A.....38, 43
Brown v. Yeats, 48 Fed. 115..... 34
Bucknall v. Murray, 5 Com. Cas. 312..... 2
Budgett v. Binnington, L. R. (1891), 1 Q. B. 35, 6 Asp. M. C. 592. 43
Bull v. Bath Iron Works, 75 App. Div. 380 (N. Y.)..... 1
Bull v. N. Y. & P. R. S. S. Co., 167 Fed. 792, C. C. A..... 18
Burma, The, 187 Fed. 94, C. C. A.....7, 14
Burn Line v. U. S. & A. S. S. Co., 162 Fed. 298, C. C. A... 10
28, 29
Burrell v. Green, 12 Asp. M. C. 411, L. R. (1915), 1 K. B. 391, 20 Com. Cas. 84..... 13
Burrill v. Crossman, 65 Fed. 104..... 26

C

Calderon v. Atlas S. S. Co., 64 Fed. 874..... 69
Calderon v. Atlas S. S. Co., 64 Fed. 874, 170 U. S. 272..59, 76
Caledonia, The, 157 U. S. 124, 39 L. Ed. 644....59, 65, 70, 84
Caledonia, The, 43 Fed. 681..... 25
Callahan v. Munson, 209 N. Y. 546..... 19
Can. Pac. v. Wieland, 226 Fed. 670, C. C. A..... 61
Capitol Trans. Co. v. Cambria Stl. Co., see The Benjamin Noble, 249 U. S. 334, 63 L. Ed. —..... 71
Carbon Slate Co. v. Ennis, 114 Fed. 260, C. C. A..... 37

[References are to Sections.]

SECTION

Cargo ex Argos, L. R. 5, P. C. 134, 2 Asp. M. C. 6..... 28
Carib Prince, The, 170 U. S. 655, 42 L. Ed. 1181..... 65
Carisbrook, The, 247 Fed. 583..... 67
Caro. Cement Co. v. Anderson, 186 Fed. 145..... 66
Carsanego v. Wheeler, 16 Fed. 248.....36, 42
Cazalet v. Morris, 1916 Sess. Cas. (Scotch) 952..... 82
Caze v. Balto. Ins. Co., 7 Cranch, 358..... 30
Ceballos v. Munson, 93 App. Div. (N. Y.) 593..... 20
Centurion, The, 57 Fed. 412.....3, 10
Ceres, The, 72 Fed. 936, C. C. A.....1, 85
Chappel v. Comfort, 10 C. B. N. S. 802, 4 L. T. 448..... 26
China Mut. Ins. Co. v. Force, 142 N. Y. 90..... 30
Chinese Engineering Co. v. Sale, 14 Asp. M. C. 95, L. R. (1917), 2 K. B. 599..... 14
Christie v. Davis Coal & Coke Co., 95 Fed. 837, affd. 110 Fed. 1006..... 31
Christophersen v. Donald, 175 Fed. 1002, affd. 187 Fed. 975. 5
Chubb v. Seven Thousand Eight Hundred Bushels of Oats, Fed. Cas. No. 2709..... 81
Ciampa v. Brit. Stm. Co., 20 Com. Cas. 247, L. R. (1915), 2 K. B. 774..... 72
Cito, The, L. R. 7, P. D. 5, 4 Asp. M. C. 468..... 30
Citta di Messina, The, 169 Fed. 472..... 69
Clyde Commercial v. West India S. S. Co., 169 Fed. 275, C. C. A.....7, 13, 14, 72
Clydesdale v. Brauer, 120 Fed. 854..... 1
Coastwise, The, 233 Fed. 1, C. C. A..... 63
Colima, The, 82 Fed. 665.....65, 66
Compagnie Maritime v. Meyer, 248 Fed. 881, C. C. A..... 65
Constable v. National S. S. Co., 154 U. S. 51, 38 L. Ed. 903. 71
Constantine & Pick. v. Auchincloss, 161 Fed. 843, C. C. A... 35
Constantine v. Tweedie, 159 Fed. 706, C. C. A..... 19
Constantine v. West India S. S. Co., 199 Fed. 964..... 5
Constantine v. West India S. S. Co., 231 Fed. 472..... 85

SECTION

Continental Coal Co. v. Bowne, 115 Fed. 945..... 55
Corfe Castle, The, 221 Fed. 98..... 52
Corrigan v. Iroquois Furnace Co., 100 Fed. 870, C. C. A.... 56
Corsar v. Spreckels, 141 Fed. 260, C. C. A.....66, 67
Costello v. Laths, 44 Fed. 105..... 80
Coventina, The, 52 Fed. 156..... 72
Coverdale v. Grant, L. R. 9, A. C. 470, 5 Asp. M. C. 353..46, 56
Craigallion, The, 20 Fed. 747..... 12
Crawford v. Wilson, 1 Com. Cas. 277..... 47
Creighton v. Dilks, 49 Fed. 107..... 41
Crisp v. U. S. & Aust. S. S. Co., 124 Fed. 748.....5, 7
Crooks v. Allan, L. R. 5, Q. B. D. 38, 4 Asp. M. C. 216...75, 78
Crossman v. Burrill, 179 U. S. 100, 45 L. Ed. 106....26, 27, 50
Crow v. Myers, 41 Fed. 806.....22, 38
Crowell v. Union Oil Co., 107 Fed. 302, C. C. A..... 73
Crowley v. Hurd, 172 Fed. 498..... 52
Crown of Galicia, The, 232 Fed. 305, C. C. A..... 5
Cunard v. Kelley, 115 Fed. 678, C. C. A.....61, 74
C. W. Elphicke, The, 117 Fed. 279, affd. 122 Fed. 439..... 66
Cygnet, The, 126 Fed. 742, C. C. A..... 66
Cyprus, The, 20 Fed. 144..... 41

D

Dahl v. Nelson, L. R. 6, A. C. 38, 4 Asp. M. C. 392..... 36
Dalbeattie S. S. Co. v. Card, 57 Fed. 304..... 22
Dampsk. Ella v. Inter-Amer. S. S. Co., 205 Fed. 734, C. C. A. 7
Dantzler v. Churchill, 136 Fed. 560, C. C. A..... 43
Davis v. Pendergast, 16 Blatch, 565, F. C. No. 3647....40, 50
Davis v. Smokeless Fuel Co., 196 Fed. 753, C. C. A.....49, 80
Davis v. Wallace, 3 Cliff. 123, F. C. No. 3657..... 50
Davison v. Von Lingen, 113 U. S. 40, 28 L. Ed. 885..... 21
Dayton v. Parke, 142 N. Y. 391.....26, 27
Defiance, The, 6 Ben. 162, F. C. No. 3740..... 31
De Ford v. Maryland Stl. Co., 113 Fed. 72, C. C. A..... 85

[References are to Sections.]

SECTION

Delaware, The, 14 Wall. 579, 20 L. Ed. 779..... 81
Delaware, The, 161 U. S. 459, 40 L. Ed. 771..... 63
Del Norte, The, 234 Fed. 667..... 81
Dene S. S. Co. v. Munson, 103 Fed. 983..... 18
Dene v. Tweedie, 133 Fed. 589, 143 Fed. 854..... 4
Deshon v. Fosdick, 1 Woods, 286, F. C. No. 3819..... 21
De Silvale v. Kendall, 4 M. & S. 37..... 29
De Sola v. Pomares, 119 Fed. 373..... 29
Dewar v. Mowinckel, 179 Fed. 355, C. C. A.....27, 35
D. Harvey, The, 139 Fed. 755..... 77
Dictator, The, 30 Fed. 637.....26, 35
Disney v. Furness, 79 Fed. 810..... 22
Dobell v. Rossmore, L. R. (1895), 2 Q. B. 408, 8 Asp. M. C. 33..... 65
Donnell v. Amoskeag Co., 118 Fed. 10, C. C. A...27, 46, 51, 56
Draupner, The, L. R. (1910), A. C. 450, 11 Asp. M. C. 436. 25
Drottning, Sophia, The, 153 Fed. 1017..... 32
Dufourcet v. Bishop, L. R. 18, Q. B. D. 373, 6 Asp. M. C. 109.....29, 83
Dunlop S. S. Co. v. Tweedie (The Queen Olga), 178 Fed. 673, C. C. A.....7, 13
Dunn v. Bucknall, 8 Com. Cas. 33, L. R. (1902), 2 K. B. 614, 9 Asp. M. C. 336..... 72
Duplan Silk Co. v. Lehigh Val. R. Co., 223 Fed. 600, C. C. A..... 76
Dupont v. Vance, 19 How. 162, 15 L. Ed. 584..... 66
Durchman v. Dunn, 101 Fed. 606..... 53
D'Utassy v. Barrett, 219 N. Y. 420..... 76

E

Earn Line v. Ennis, 157 Fed. 941, affd. 165 Fed. 633..... 41
E. A. Shores, Jr., The, 73 Fed. 342.....63, 66, 67
East Asiatic S. S. Co. v. Tronto, 31 T. L. R. 543..... 5
Egan v. Barclay Fibre Co., 61 Fed. 527..... 53

[References are to Sections.]

SECTION

Egypt, The, 25 Fed. 320..... 71
Eikrem v. New Eng. Coal Co., 125 Fed. 987..... 32
Elder Dempster v. Dunn, 15 Com. Cas. 49 (H. of L.)..... 11
Elder Dempster v. Earn Line, 168 Fed. 50, C. C. A.....41, 57
Eleven Hundred Tons of Coal, 12 Fed. 185..... 46
Eliza Lines, The, 61 Fed. 308.....27, 30
Eliza Lines, The, 114 Fed. 307, 102 Fed. 190, 191..... 30
Eliza Lines, The, 199 U. S. 119, 50 L. Ed. 115..... 30
Elvers v. Grace, 244 Fed. 705, C. C. A..... 27
Ely, The, 110 Fed. 563, affd. 122 Fed. 447.....4, 20
Embiricos v. Reid, 19 Com. Cas. 263, L. R. (1914). 3 K. B. 45. 45
Empire, The, 69 Fed. 101, C. C. A..... 1
Empire Transportation Co. v. Philadelphia & R. C. & I. Co., 77 Fed. 919, C. C. A.....39, 51
Endsleigh, The, 124 Fed. 858..... 7
Engman v. Palgrave, 4 Com. Cas. 75.....1, 21
Enrique, The, 7 Fed. 490..... 25
Eric, The, 3 Ware, 225, 5 F. C. 4512..... 28
Erie Lighter 108, 250 Fed. 490..... 71
Ernestina, The, 259 Fed. 772, C. C. A..... 78
Erskine M. Phelps, The, 231 Fed. 767..... 60
Essex S. S. Co. v. Langbehn, 250 Fed. 98, C. C. A..... 72
Etona, The, 64 Fed. 880, affd. 71 Fed. 895..... 67
E. T. Stotesbury, The, 187 Fed. 111, C. C. A.....35, 37
Euripides, The, 71 Fed. 728, 52 Fed. 161..... 70
Evans v. Blair, 114 Fed. 616, C. C. A..... 55
Exe, The, 57 Fed. 399, C. C. A..... 70

F

Falls of Keltie, The, 108 Fed. 416.....1, 17
Fargrove Nav. Co. v. Lavino, 191 Fed. 525..... 57
Farmer's L. & T. Co. v. N. P. R. Co., 120 Fed. 873, affd. sub nomine, N. P. R. Co. v. Amer. Trad. Co., 195 U. S. 439, 49 L. Ed. 269..... 84

[References are to Sections.]

SECTION

Farrow v. Am. Ag. Chem. Co., 194 Fed. 1018..... 55
Field v. Hafnia S. S. Co., 234 Fed. 187, 236 Fed. 599, 241 Fed. 233. 13
Field Line v. So. Atl. S. S. Co., 201 Fed. 301, C. C. A....10, 11
Finlay v. Liverpool Co., 23 L. T. 251..... 72
Finney v. Grand Trunk, 14 Fed. 171..... 51
Firemen's Fund Ins. Co. v. Globe Nav. Co., 234 Fed. 273.. 29
Fish v. 150 Tons Brown Stone, 20 Fed. 201..... 51
Flintshire, The, 69 Fed. 471..... 73
Flood v. Crowell, 92 Fed. 402, C. C. A..... 37
Folmina, The, 212 U. S. 354, 53 L. Ed. 546..... 70
Forest Oak S. S. Co. v. Richard, 5 Com. Cas. 100..... 21
France v. Spackman, 18 Com. Cas. 52, 12 Asp. M. C. 289.. 48
Francesca Curro, The, F. C. No. 5029..... 21
Francesco v. Massey, L. R. 8, Excheq. 101, 2 Asp. M. C. 594. 27
Frazer v. Telegraph Co., L. R. 7, Q. B. 566..... 1
Freights of the Kate, 63 Fed. 707..... 16
French v. Newgass, L. R. 3, C. P. D. 163, 3 Asp. M. C. 574. 1
Frey, The, 106 Fed. 319..... 66
Fri, The, 154 Fed. 333, C. C. A.....25, 63, 66
Friedlander v. T. & P. Ry. Co., 130 U. S. 416, 32 L. Ed. 991. 60
Friesland, The, 104 Fed. 99..... 65
Frogner, The, 49 Fed. 876..... 31
Fry v. Mercantile Bank, L. R. 1, C. P. 689..... 26
Funch v. Abenheim, 20 Hun, 1.....1, 21
Furness v. Forwood, 2 Com. Cas. 223, 8 Asp. M. C. 298.... 46
Furness v. Muller, 232 Fed. 186..... 72
Furness v. Rederi Banco, 23 Com. Cas. 99..... 72

G

Gage v. Tirrell, 9 Allen (Mass.) 310..... 70
Gardner v. Trechman, L. R. 15, Q. B. D. 154, 5 Asp. M. C. 558. 26

[References are to Sections.]

SECTION

Gazelle, The, 11 Fed. 429, affd. 128 U. S. 474, 32 L. Ed. 496. 5
George Dumois, The, 115 Fed. 65, C. C. A.....3, 85
Georgia R. Co. v. Blish Milling Co., 241 U. S. 190, 60 L. Ed. 948. . . . 77
Germanic, The, 196 U. S. 589, 49 L. Ed. 610..... 68
Ghazee, The, 172 Fed. 368..... 74
Gibson v. Brown, 44 Fed. 98..... 31
Giertsen v. Turnbull, 1908 Sess. Cas. 1101..... 13
Gilbert v. Borden, 170 Fed. 706, C. C. A.....26, 52
Gilchrist Trans. Co. v. Boston Ins. Co., 223 Fed. 716, C. C. A. . . . 63
Gill v. Browne, The Harbinger, 53 Fed. 394, C. C. A...21, 22, 52
Giulio, The, 34 Fed. 909..... 80
Giuseppe v. Mfrs. Export Co., 124 Fed. 663..... 21
Glasgow v. Bacon, 132 Fed. 881, affd. 139 Fed. 541..... 17
Glasgow S. S. Co. v. Tweedie, 143 Fed. 184, 154 Fed. 84.... 2
Glenfinlas, The, 48 Fed. 758, C. C. A..... 53
Glenlochy, The, 226 Fed. 971. . . . 73
Globe Nav. Co. v. Russ Lbr. Co., 167 Fed. 228..... 69
Globe Ref. Co. v. Landa Oil Co., 190 U. S. 540, 47 L. Ed. 1171. . . . 82
Godard v. Gray, L. R. 6, Q. B. 139..... 33
Golcar v. Tweedie, 146 Fed. 563.....19, 63
Good Hope, The, 197 Fed. 149, C. C. A..... 73
Gough v. Hamb. Am. Line, 158 Fed. 174..... 15
Gould v. Graffin, 62 Fed. 605..... 42
Governor Carey, The, 2 Hask. 487, F. C. No. 5645a..... 81
Gow v. Gans Line, 174 Fed. 215..... 13
Grace v. Luckenbach, 248 Fed. 953..... 72
Grant v. Norway, 10 C. B. 665..... 60
Gran Canaria, The, 16 Fed. 868..... 81
Gray v. Moore, 37 Fed. 266..... 21
G. R. Booth, The, 171 U. S. 450, 43 L. Ed. 234..... 70
Greenwell v. Ross, 34 Fed. 656..... 22

SECTION

Gronstadt v. Witthoff, 21 Fed. 253 26
Groves v. Volkart, 1 Cab. & E. 309 22
Guadeloupe, The, 92 Fed. 670 67
Gualala, The, 178 Fed. 402, C. C. A. 81
Guffey v. Coastwise Trans. Co., 180 Fed. 677, C. C. A. 20
Gullischen v. Stewart, L. R. 13, Q. B. D. 317, 5 Asp. M. C. 200 27

H

Hackney, The, 152 Fed. 520 13
Hagerman v. Norton, 105 Fed. 996, C. C. A. 40, 43, 48
Hamburg Am. Line v. Atl. Transport, 236 Fed. 505, C. C. A. 79
Hamilton v. Pandorf, L. R. 12, App. Cas. 518 70
Hanna v. Pitt, 121 App. Div. 420 (N. Y.) 79
Hansen v. Amer. Tra. Co., 208 Fed. 884, C. C. A. 42, 63
Hanson v. Haywood, 152 Fed. 401, C. C. A. 67
Harbinger, The (Gill v. Browne), 50 Fed. 941, affd. 53 Fed. 394 .....21, 22, 52
Harding v. Cargo of Coal, 147 Fed. 971 55
Harriman, The, 9 Wall. 161, 19 L. Ed. 629 .....28, 29
Harrington v. Amer. Tie & Timber Co., 185 Fed. 475, C. C. A. 43
Harrison v. Bags of Sugar, 44 Fed. 686, affd. 53 Fed. 828.. 31
Harrison v. Fortlage, 161 U. S. 57, 40 L. Ed. 616 30
Harrison v. Knowles, 22 Com. Cas. 293 1
Harrison v. Smith, 67 Fed. 354, C. C. A. 53
Hassan v. Runciman, 10 Com. Cas. 19, 10 Asp. M. C. 31 1
Hathor, The, 167 Fed. 194 7
Hatton v. De Belaunzaran, 26 Fed. 780 38
Hawkhurst v. Keyser, 84 Fed. 693, C. C. A. 47
Helios, The, 115 Fed. 705, C. C. A. 2, 5
Henry B. Hyde, The, 90 Fed. 114, C. C. A. 73
Henry Buck, The, 39 Fed. 211 85
Herbert v. Hallett, 3 Johns. Cas. 93 30

[References are to Sections.]

SECTION

Herman v. Compagnie, 242 Fed. 859, C. C. A..... 73
Hettie Ellis, The, 20 Fed. 507..... 81
Higgins v. Anglo Algerian Co., 248 Fed. 386, C. C. A..... 60
Hinckley v. Wilson Lbr. Co., 205 Fed. 974.....32, 52
Hine v. N. Y. & Bermudez, 68 Fed. 920..... 63
Hine v. Perkins, 55 Fed. 996, C. C. A..... 53
Hogarth v. Blythe, L. R. (1917), 2 K. B. 534, 22 Com. Cas. 334..... 26
Hogarth v. Miller, L. R. (1891), A. C. 48, 7 Asp. M. C. 1.... 13
Hohl v. Norddeutscher Lloyd, 175 Fed. 544, C. C. A..... 76
Holland v. 725 Tons of Coal, 36 Fed. 784..... 85
Holman v. Gans Line, 186 Fed. 96, C. C. A.....40, 41, 43, 52
Holmes v. Montauk Co., 93 Fed. 731, C. C. A..... 34
Hostetter v. Park, 137 U. S. 30, 34 L. Ed. 568..... 69
Houlder v. Weir, 10 Com. Cas. 228, L. R. (1905), 2 K. B. 267, 10 Asp. M. C. 81..... 42
Howden, The, F. C. No. 6765, 5 Sawy. 389..... 66
Hubbell v. Gt. West Ins. Co., 74 N. Y. 246..... 30
Hudson, The, 172 Fed. 1005.....67, 73
Hudson v. Ede, L. R. 3, Q. B. 412..... 46
Hugg v. Augusta Ins. Co., 7 How. 595, 12 L. Ed. 834....28, 30
Hughes v. Hoskins, 136 Fed. 435, C. C. A.....40, 50
Hugo, The, 61 Fed. 860..... 83
Hulthen v. Stewart, L. R. 1903, A. C. 389, 8 Com. Cas. 297, 9 Asp. M. C. 285..... 53
Humarock, The, 234 Fed. 716.....63, 66
Hurlbut v. Turnure, 81 Fed. 208, C. C. A..... 66
Huron Bge. Co. v. Turney, 71 Fed. 972.....25, 39
Hurstdale, The, 169 Fed. 912, affd. 179 Fed. 371..... 1
Hyperion's Cargo, The, 2 Lowell, 93, F. C. No. 6987....49, 80

I

India, The, 49 Fed. 76, C. C. A.....38, 40, 46
Indrani, The, 177 Fed. 941, C. C. A.....65, 67

[References are to Sections.]

Indrapura, The, 238 Fed. 853..... 69
Indrapura, The, 178 Fed. 594, affd. 190 Fed. 711..... 66
Indrapura, The, 171 Fed. 929..... 69
Ingram v. Services Maritimes, L. R. (1914), 1 K. B. 541, 12 Asp. M. C. 387, 19 Com. Cas. 105..... 71
In re Cal. Nav. Co., 110 Fed. 678..... 63
In re Cargo of Coal, 175 Fed. 548..... 55
Ins. Co. of N. A. v. N. G. Lloyd, 106 Fed. 973..... 65
International Mercantile Marine v. Fels, 164 Fed. 337, affd. 170 Fed. 275..... 79
Intl. Nav. Co. v. Farr, 181 U. S. 218, 45 L. Ed. 830....65, 66
International Paper Co. v. The Gracie D. Chambers, 248 U. S. 387, 63 L. Ed. 318..... 29
Ionia, The, 135 Fed. 317, C. C. A..... 51
Ira Chaffee, The, 2 Fed. 401..... 80
Irrawaddy, The, 171 U. S. 187, 43 L. Ed. 130..... 78
Isham v. Cargo of Piles, 46 Fed. 403..... 58
Isle of Mull, The, 257 Fed. 798..... 14
Isola di Procida, The, 124 Fed. 942..... 60
Italia, The, 187 Fed. 113, C. C. A..... 61
Italia, The, 59 Fed. 617..... 73
Italian State Railways v. Mavrogordatos, L. R. (1919), 2 K. B. 305..... 8

J

Jackson v. Union Marine Ins. Co., L. R. 10, C. P. 125, 2 Asp. M. C. 435..... 23
James v. Brophy, 71 Fed. 310..... 40
James Baird, The, 90 Fed. 669..... 52
Jason, The, 225 U. S. 32, 56 L. Ed. 969..... 78
Jason, The, 28 Fed. 323..... 30
Jay Wai Nam v. Anglo-Am. Oil Co., 202 Fed. 822, C. C. A... 67
Jeannie, The, 225 Fed. 178, 236 Fed. 463..... 66
Jebsen v. Cargo of Hemp, 228 Fed. 143.....10, 16

[References are to Sections.]

SECTION

Jenneson v. Sec'y of State, L. R. (1916), 2 K. B. 702, 22 Com. Cas. 1. 27
Jennings v. Clyde S. S. Co., 148 App. Div. 615, affd. 210 N. Y. 570. 71
J. E. Owen, The, 54 Fed. 185. 51
John A. Briggs, The, 120 Fed. 6, C. C. A. 32
Johnson v. Meeker, 96 N. Y. 93. 85
Johnston v. Saxon Queen S. S. Co., 12 Asp. M. C. 305. 5
John Vittucci Co. v. Can. Pac. R. Co., 238 Fed. 1005. 59
Jonasen v. Keyser, 112 Fed. 443, C. C. A. 46, 49
Jordan v. Ins. Co., 1 Story, 342, F. C. No. 7524. 28
Joseph Farwell, The, 31 Fed. 844. 30
Julia Luckenbach, The (Luckenbach v. McCahan), 235 Fed. 388, C. C. A., affd. 248 U. S. 139, 63 L. Ed. 170. . 3, 71, 75
Juliet C. Clark, The, F. C. No. 7580. 28
J. W. Brooks, The, 122 Fed. 881. 53

K

Kansas, The, 87 Fed. 766. 69
Karo, The, 29 Fed. 652. 26
Karran v. Peabody, 145 Fed. 166, C. C. A. 22
Kate, The, 164 U. S. 458, 41 L. Ed. 512. 7
Kathleen, The, L. R. 4, A. & E. 269, 3 Asp. M. C. 367. 30
Kaupanger, The, 241 Fed. 702. . . . . 9, 32
Keen v. Audenreid, 5 Ben. 535, F. C. No. 7639. 53
Kennedy v. Weston, 136 Fed. 166, C. C. A. 11
Kerr v. Schwaner, 177 Fed. 659, C. C. A. 40, 56
Kirkhill, The, 99 Fed. 575, C. C. A. 25, 81
Kish v. Cory, L. R. 10, Q. B. 553, 2 Asp. M. C. 593. 27
Knott v. Botany Worsted Mills, 179 U. S. 69, 45 L. Ed. 90. . . . . 63, 68
Koan Maru, The, 251 Fed. 384. 76
Koenigin Luise, The, 185 Fed. 478, C. C. A. 73
Kronzprinzessin Cecilie, The, 244 U. S. 12, 61 L. Ed. 960. . 72

[References are to Sections.]

SECTION

Kruger v. Moel Tryvan Co., L. R. (1907), A. C. 272, 13 Com. Cas. 1, 10 Asp. M. C. 465.....11, 26
Kuhnhold v. Compagnie, 251 Fed. 387..... 76

L

La Bourgogne, 144 Fed. 781, C. C. A..... 83
La Conner Trading Co. v. Widmer, 136 Fed. 177, C. C. A... 84
Lake S. S. Co. v. Bacon, 129 Fed. 819, 137 Fed. 961....13, 63
Larsen v. 150 Bales Sisal Grass, 147 Fed. 783..... 16
Larsen v. Sylvester, L. R. 1908, A. C. 295, 13 Com. Cas. 328, 11 Asp. M. C. 78..... 48
Lawrence v. Minturn, 17 How. 100, 15 L. Ed. 58..... 81
Leader, The, 166 Fed. 139..... 7
Leary v. Talbot, 160 Fed. 914, C. C. A.....43, 52
Leh. Val. Coal Co. v. Ionia Trans. Co., 174 Fed. 798..... 49
Lennox, The, 90 Fed. 308..... 73
Leonis S. S. Co. v. Rank, L. R. (1908), 1 K. B. 499, 13 Com. Cas. 136. 35
Lewis v. Mowinckel, 215 Fed. 710, C. C. A..... 14
Lindsay v. Cusimano, 12 Fed. 504, 10 Fed. 302.....35, 49, 52
Lines v. Atlantic Transport, 223 Fed. 624, C. C. A..... 76
Longfellow, The, 104 Fed. 360..... 66
Lovell v. Davis, 101 U. S. 541, 25 L. Ed. 944..... 21
Lowber v. Bangs, 2 Wall. 728, 17 L. Ed. 768..... 21
Luckenbach v. Insular Line, 186 Fed. 327, C. C. A..... 7
Luckenbach v. McCahan Rfg. Co. (The Julia Luckenbach), 248 U. S. 139, 63 L. Ed. 170.....3, 71, 75
Luckenbach v. Pierson, 229 Fed. 130, C. C. A..... 8
Lyle Co. v. Cardiff, 5 Com. Cas. 87..... 58
Lyra, The, 255 Fed. 667, C. C. A..... 59

M

Mackill v. Wright, L. R. 14, A. C. 106..... 1
Maggie Hammond, The, 9 Wall. 435, 19 L. Ed. 772.....30, 80

[References are to Sections.]

SECTION

Maine, The, 161 Fed. 401 63
Man. Liners v. Va. Caro. Chem. Co., 194 Fed. 463, affd. 204 Fed. 564 ..... 24, 26
Manchisa v. Card, 39 Fed. 492 32
Manitoba, The, 104 Fed. 145 66
March, The, 25 Fed. 106 ..... 21, 22
Marshall v. McNear, 121 Fed. 428 51
Matthias v. Beeche, 111 Fed. 940 1
Mawson v. Beyer, 12 Asp. M. C. 423, L. R. (1914), 1 K. B. 304, 19 Com. Cas. 59 57
McFadden v. Blue Star Line, L. R. (1905), 1 K. B. 697, 10 Com. Cas. 123, 10 Asp. M. C. 55 ..... 65, 66
McGill v. Michigan S. S. Co., 144 Fed. 788, C. C. A. 71
McKay v. Ennis, 37 Fed. 229 60
Mead-King v. Jacobs, 19 Com. Cas. 380, L. R. (1915), 2 K. B. 640, affd. 20 Com. Cas. 288 13
Mehrbach v. Liv. S. S. Co., 12 Fed. 77, 18 Fed. 192 29
Menantic S. S. Co. v. Pierce, 88 Fed. 308 9
Mencke v. A Cargo of Java Sugar, 187 U. S. 248, 47 L. Ed. 163 24
Merchants & Miners Trans. Co. v. Cotton, 216 Fed. 237 30
Merida, The, 107 Fed. 146, C. C. A. 67
Mexican Prince, The, 82 Fed. 484, affd. 91 Fed. 1003 ..... 66, 67
Meyer v. Pacific Mail, 58 Fed. 923 81
Meyer v. Sanderson, 32 T. L. R. 428 2
Miguel de Larrinaga, The, 217 Fed. 678 64
Milburn v. Fed. Sugar Refining Co., 161 Fed. 717, C. C. A. .. 42
Milburn v. Jamaica Fruit Co., L. R. (1900), 2 Q. B. 540, 5 Com. Cas. 346, 9 Asp. M. C. 122 11
Milburn v. Nord Deutscher Lloyd, 58 Fed. 603 10
Milburn v. 35000 Boxes Oranges, 57 Fed. 236 ..... 49, 52
Miletus, The, 5 Blatch. 335, F. C. No. 9545 70
Millar v. The Freden, 22 Com. Cas. 297, affd. 23 Com. Cas. 311 1

[References are to Sections.]

SECTION

Mississippi, The, 76 Fed. 375 68
Mitchell v. Steel, 22 Com. Cas. 63, L. R. (1916), 2 K. B. 610. 79
Mitsui v. St. Paul F. & M. Ins. Co., 202 Fed. 26, C. C. A... 30
Moel Tryvan v. Weir, 15 Com. Cas. 61, 307, L. R. (1910), 2 K. B. 844, 11 Asp. M. C. 469 22
Monon. Coal Co. v. Hurst, 200 Fed. 711 63
Monsen v. Amsinck, 166 Fed. 817 29
Monte A., The, 12 Fed. 331 80
Moody v. 500,000 Laths, 2 Fed. 607 53
Moor Line v. Dreyfus, 23 Com. Cas. 80 34
Moore v. Duncan, 237 Fed. 80 C. C. A. 76
Morgan v. Garfield & Proctor Coal Co., 113 Fed. 520 49
Moringen, The, 98 Fed. 996 16
Morrison v. Shaw, L. R. (1916), 2 K. B. 783, 22 Com. Cas. 81, 13 Asp. M. C. 504 69
Moses v. Hamburg Amer. Line, 88 Fed. 329 63
Mott v. Chew, 137 Fed. 197 85
Mott v. Frost, 47 Fed. 82 53
Mudie v. Strick, 14 Com. Cas. 135, 11 Asp. M. C. 235 48
Muirfield, The, 174 Fed. 75 57
Munson v. Elswick Lodge S. S. Co., 207 Fed. 984, affd. 214 Fed. 84. 2
Munson v. Glasgow Nav. Co., 235 Fed. 64, C. C. A. 7, 9 18, 19, 43
Munson v. Miramar, 166 Fed. 722, C. C. A. 3, 17
Munson v. Straits of Dover, 99 Fed. 787, affd. 102 Fed. 927. 15
Murray v. Currie, L. R. 6, C. P. 24 43
Murray v. Jump Lbr. Co., 148 Fed. 123 58
Murrell, The, 200 Fed. 826, C. C. A. 63

N

Nathaniel Hooper, The, 3 Sumner, 542, F. C. No. 10,032... 30
Nat'l Bd. of Underwriters v. Melchers, 45 Fed. 643 30
Natl. Stm. Co. v. Int'l Paper Co., 241 Fed. 861, C. C. A... 29

[References are to Sections.]

SECTION

Neidenfels, The, 174 Fed. 293..... 73
Neill v. Ridley, 9 Excheq. 677..... 9
Nelson v. Nelson, L. R. 1908, A. C. 108, 13 Com. Cas. 235, 11 Asp. M. C. 9..... 41
Nelson v. Woodruff, 1 Black, 156..... 60
Nether Holme, The, 50 Fed. 434, C. C. A..... 42
New England, The, 110 Fed. 415..... 62
Newport News, The, 199 Fed. 968..... 67
New York & N. E. R. Co. v. Church, 58 Fed. 600.....49, 55
New York & P. R. S. S. Co. v. Guanica Centrale, 231 Fed. 820, C. C. A..... 72
Niagara, The, 77 Fed. 329, affd. 84 Fed. 902..... 66
Nine Hundred and Seventy-nine Boxes of Sugar, 7 Ben. 242, F. C. No. 10,271..... 25
Ninfa, The, 156 Fed. 512.....65, 66
Nor. Comm. Co. v. Lindblom, 162 Fed. 250..... 83
North. Pac. R. Co. v. Am. Trading Co., 195 U. S. 439, 49 L. Ed. 269. .....59, 72
Northern S. S. Co. v. Earn Line, 175 Fed. 529, C. C. A.... 13
Northman, The, 189 Fed. 33, C. C. A..... 5
Notara v. Henderson, L. R. 7, Q. B. 225..... 68
Nova Scotia Co. v. Sutherland, 5 Com. Cas. 106..... 8
Noyes v. Munson Line, 173 Fed. 815.....13, 17

O

O'Brien v. Bags of Guano, 48 Fed. 726.....22, 28
Ocean Prince, The, 50 Fed. 115..... 48
Oceana, The, 171 Fed. 172..... 73
O'Connell v. Bales of Sisal Hemp, 75 Fed. 410..... 25
O'Connell v. Bales of Sisal Hemp, 75 Fed. 408..... 26
Ogden v. Graham, 1 B. & S. 773..... 5
Okehampton, The, L. R. (1913), Prob. 173, 18 Com. Cas. 320, 12 Asp. M. C. 428..... 10
Olsen v. Hunter, 54 Fed. 530..... 21

[References are to Sections.]

SECTION

Olsen v. U. S. Shipping Co. (The Bergenhus), 213 Fed. 18, C. C. A. 3
Oluf, The, 19 Fed. 459 49
Olympia, The, 156 Fed. 252, C. C. A. 59
Oneida, The, 128 Fed. 687, C. C. A. 65, 66
Ontario, The, 106 Fed. 324, affd. 115 Fed. 769 . . . . . 65, 67
Oregon, The, 55 Fed. 666, C. C. A. 85
Oregon Improvement Co. v. Roach, 117 N. Y. 527 1
Orsino, The, 24 Fed. 918 . . . . . 21, 22
Owners of the Langfond v. Canadian Forwarding Co., 96 Law Times, 559, 10 Asp. M. C. 414 8

P

Pac. Coast Co. v. Reynolds, 114 Fed. 877, C. C. A. 29
Pacific Coast Co. v. Yukon Co., 155 Fed. 29, C. C. A. 69
Palace Spg. Co. v. Gans Line, L. R. (1916), 1 K. B. 138, 21 Com. Cas. 270 5
Palmas, The, 108 Fed. 87 66
Parsons on Shipping, p. 243 30
Patagonia S. S. Co. v. Gans, 243 Fed. 532, C. C. A. 9
Payne v. Ralli, 74 Fed. 563 68
Pedersen v. Pagenstecher, 32 Fed. 841 21
Peek v. Larsen, L. R. 12, Eq. 378, 1 Asp. M. C. 163 25
Peer of the Realm, The, 19 Fed. 216 26
Pendleton v. Benner Line, see Benner Line v. Pendleton, 246 U. S. 353, 62 L. Ed. 770 . . . . . 10, 66, 71
Penoyer v. Hallett, 15 Johns. 332 28
Percy v. Union Sulphur Co., 180 Fed. 1, C. C. A. 55
Perry v. Spreckels, 110 Fed. 777 38
Persiana, The, 185 Fed. 396, C. C. A. 68, 77
Phelan v. The Alvarado, F. C. No. 11,067 30
Phila., etc. S. S. Co. v. McCaldin, 198 Fed. 328, affd. 202 Fed. 735. 3
Pierson v. Ogden, F. C. No. 11,160 38

SECTION

Pietro G., The, 39 Fed. 366..... 26
Pioneer Fuel Co. v. McBrier, 84 Fed. 495..... 80
Planters' Fertilizer Mfg. Co. v. Elder, 101 Fed. 1001, C. C. A. 31, 60
Pollard v. Vinton, 105 U. S. 7, 26 L. Ed. 998..... 60
Pool Shipping Co. v. Samuel, 200 Fed. 36, C. C. A.....14, 57
Porteus v. Watney, L. R. 3, Q. B. D. 534, 4 Asp. M. C. 34.. 26
Portland Flour Mills v. B. & F. Mar. Ins. Co., 130 Fed. 860, C. C. A. 29
Portland Flouring Mills v. Weir, 95 Fed. 997..... 34
Portland Spg. Co. v. Gibson, 44 Fed. 371..... 42
Portuense, The, 35 Fed. 670..... 73
Postlethwaite v. Freeland, L. R. 5, A. C. 599, 4 Asp. M. C. 302. 56
Prebensens v. Munson, 258 Fed. 227, C. C. A..... 2
Progreso, The, 50 Fed. 835..... 72
Protection, The, 102 Fed. 516, C. C. A..... 83
Prussia, The, 88 Fed. 531, affd. 93 Fed. 837..... 65
Pyman v. Mex. Cent. Ry. Co., 169 Fed. 281, C. C. A..... 48
Pyman v. 100 Tons Kainit, 164 Fed. 364..... 40
Pyman v. Von Singen, 3 Fed. 802..... 66

Q

Queen of the Pacific, The, 180 U. S. 49, 45 L. Ed. 419..... 77
Queen Olga, The (Dunlop v. Tweedie), 162 Fed. 490, affd. 178 Fed. 673. . ..... 7, 13
Queensmore, The, 51 Fed. 250, affd. 53 Fed. 1022.....25, 29
Querini Stamphalia, The, 19 Fed. 123..... 26, 31

R

Railroad Co. v. Reeves, 10 Wall. 176, 19 L. Ed. 909..... 69
Ralli v. New York, etc. S. S. Co., 154 Fed. 286, C. C. A...30, 63
Ralli v. Paddington S. S. Co., 5 Com. Cas. 124..... 25
Randall v. Sprague, 74 Fed. 247, C. C. A.....46, 51, 56
Randolph v. Wiley, 118 Fed. 77..... 52

[References are to Sections.]

SECTION

Raymond v. Tyson, 17 How. 53, 15 L. Ed. 47..... 16
Rederiaktieselskabet Superior v. Dewar, 14 Com. Cas. 320, L. R. (1909), 2 K. B. 998, 11 Asp. M. C. 295..... 27
Red R. S. S. Co. v. N. A. Trans. Co., 91 Fed. 168, C. C. A... 57
Regulus, The, 18 Fed. 380..... 12
Reid v. Fargo, 241 U. S. 544, 60 L. Ed. 1156..... 76
Reindeer S. S. Co. v. Forslind, 13 Com. Cas. 214..... 2
Renard v. Sampson, 12 N. Y. 561..... 1
Re Piper, 86 Fed. 670..... 63
Re Tyrer, 7 Com. Cas. 166, 9 Asp. M. C. 292..... 8
Rhederi v. Clutha, 226 Fed. 339..... 34
Richard v. Holman, 123 Fed. 734..... 85
Richardson v. Samuel, L. R. (1898), 1 Q. B. 261, 3 Com. Cas. 79, 8 Asp. M. C. 330..... 46
Ridyard v. Phillips, F. C. No. 11,820, 4 Blatch. 443..... 28
Riley v. Cargo of Iron Pipes, 40 Fed. 605..... 80
Roanoke, The, 59 Fed. 161..... 78
Rocky City, The, 33 Fed. 556..... 38
Rodocanachi v. Milburn, L. R. 18, Q. B. D. 67, 6 Asp. M. C. 100. . . . .29, 83
Ropner v. Inter-American S. S. Co., 243 Fed. 549, C. C. A... 2
Ropner v. Ronnebeck, 20 Com. Cas. 95..... 48
Rosasco v. Pitch Pine Lbr. Co., 138 Fed. 25, C. C. A....21, 22
Rosedale, The, 88 Fed. 324, affd. 92 Fed. 1021.....63, 67
Ross v. Compagnie, 45 Fed. 207..... 15
Rossend Castle, The, 30 Fed. 462..... 85
Routh v. MacMillan, 2 H. & C. 750..... 1
Rowson v. Atl. Transport, 9 Com. Cas. 33, L. R. (1903), 2 K. B. 666, 9 Asp. M. C. 458.....67, 68
Royal Sceptre, The, 187 Fed. 224..... 81
R. P. Fitzgerald, The, 212 Fed. 678, C. C. A..... 66
Rupprecht v. Delacamp, 165 Fed. 381, affd. 169 Fed. 1022.. 22
Rumball v. Puig, 34 Fed. 665..... 42
Rygja, The, 149 Fed. 896, rev. 161 Fed. 106..... 2

[References are to Sections.]

S

SECTION

Salmen Brick Co. v. Donald, 194 Fed. 800, C. C. A..... 18
Samuel v. West Hartlepool Co., 11 Com. Cas. 115..... 10
Samuel W. Hall, The, 49 Fed. 281..... 22
Sanders v. Munson, 74 Fed. 649, C. C. A..... 85
Sandfield, The, 79 Fed. 371, affd. 92 Fed. 663.....26, 66, 67
San Guglielmo, The, 241 Fed. 969, mod. 249 Fed. 588..... 73
San Guglielmo, The, 249 Fed. 588, C. C. A..... 77
Sanguinetti v. Pac. Stm. Nav. Co., L. R. 2, Q. B. D. 238, 3 Asp. M. C. 300..... 27
Santona, The, 152 Fed. 516..... 19
Saturnus, The, 250 Fed. 407, C. C. A..... 80
Sawyer v. Cleveland Iron Mines, 69 Fed. 211..... 60
Schmidt v. Keyser, 88 Fed. 799, C. C. A..... 27
Schr. Mahukona Co. v. Cargo of Lbr., 142 Fed. 578.....46, 56
Schr. Mahukona Co. v. Nelson, 142 Fed. 615..... 23
Schooner Reeside, 2 Sumn. 567, F. C. No. 11,657..... 70
Schwarzchild v. Nat'l S. S. Co., 74 Fed. 257..... 69
Scottish Nav. Co. v. Souter, L. R. (1917), 1 K. B. 222, 22 Com. Cas. 154..... 14
Scow No. 190, 88 Fed. 320..... 30
Seaman v. Adler, 37 Fed. 268..... 28
Seefahrer, The, 133 Fed. 793..... 60
Seneca, The, 163 Fed. 591, reversed on another point, 172 Fed. 370..... 74
Serraino v. Campbell, L. R. (1891), 1 Q. B. 283, 7 Asp. M. C. 48..... 26
Sewall v. Wood, 135 Fed. 12, C. C. A..... 42
Shillito, The, 3 Com. Cas. 44..... 16
Ship Howard v. Wissman, 18 How. 231, 15 L. Ed. 363..... 60
Sikh, The, 175 Fed. 869, affd. 184 Fed. 990..... 60
Silvia, The, 171 U. S. 462, 43 L. Ed. 241.....66, 67
Sintram, The, 64 Fed. 884..... 66
Sixteen Hundred Tons Nitrate v. McLeod, 61 Fed. 849, C. C. A.....46, 48, 50

[References are to Sections.]

SECTION

Skipton Castle, The, 243 Fed. 523, C. C. A.....68, 73
Sleeper v. Puig, 17 Blatch. 36, F. C. No. 12,941..... 53
Smailes v. Evans, 33 Times, L. R. 233..... 13
Smailes v. Hans Dessen, 12 Com. Cas. 117, 10 Asp. M. C. 319. 58
Smith v. Britain S. S. Co., 123 Fed. 176..... 61
Smith v. Dart, L. R. 14, Q. B. D. 105, 5 Asp. M. C. 310..... 22
Smith v. N. Y., etc. Co., 56 Fed. 527..... 35
Smith v. Rob. R. Sizer, 134 Fed. 928..... 52
Smith v. Roberts, 67 Fed. 361, C. C. A..... 53
Smith v. 60,000 Ft. Lbr., 2 Fed. 396..... 52
Snow v. Carruth, 1 Spr. 324, F. C. No. 13,144..... 28
Snow v. 350 Tons Mahogany, 46 Fed. 129..... 42
Solveig, The, 103 Fed. 322, C. C. A..... 7
Sorensen v. Keyser, 52 Fed. 163, C. C. A.....40, 46
South Atlantic S. S. Line v. London Stores Co., 255 Fed. 306, C. C. A..... 69
Southern Trans. v. Unkel, 236 Fed. 779..... 50
Southwark, The, 191 U. S. 1, 48 L. Ed. 65..... 63
Spartan, The, 25 Fed. 44..... 52
Spinetti v. Atlas S. S. Co., 80 N. Y. 71..... 74
Sprott, The, 70 Fed. 327..... 10
S. S. Rutherglen Co. v. Howard Houlder, 203 Fed. 848, C. C. A. 35, 48, 53
S. S. Wellesley Co. v. Hooper, 185 Fed. 733, C. C. A....63, 66
Standard Fuel Supply Co. v. Gray, 183 Fed. 513, C. C. A.. 43
Standard Varnish Works v. The Bris, 248 U. S. 392, 63 L. Ed. 321 29
St. Bernard, The, 105 Fed. 994.....37, 38
Steelman v. Taylor, 3 Ware, 52, F. C. No. 13,349..... 28
Steinman v. Angier Line, L. R. (1891), 1 Q. B. 619, 7 Asp. M. C. 46. 74
Stephens v. Harris, 6 Asp. M. C. 192..... 48
Stevens v. Navigazione, 39 Fed. 562..... 73

[References are to Sections.]

SECTION

Stoomvart v. Lind, 170 Fed. 918, C. C. A..... 82
St. Quentin, The, 162 Fed. 883, C. C. A..... 73
Straits of Dover S. S. Co. v. Munson, 95 Fed. 690, affd. 100 Fed. 1005..... 2
Strathdon, The, 89 Fed. 374.....30, 71
Styria, The, 101 Fed. 728, C. C. A..... 84
Styria, The, 186 U. S. 1, 46 L. Ed. 1027..... 72
Sun Co. v. Healy, 163 Fed. 48, C. C. A..... 67
Swallow, The, 27 Fed. 316, affd. 30 Fed. 204..... 26
Swan v. 550 Tons of Coal, 35 Fed. 307..... 56
Swan v. Wiley, 161 Fed. 905, C. C. A..... 52
Swift v. Furness Withy, 87 Fed. 345..... 69

T

Tagart v. Fisher, L. R. (1903), 1 K. B. 391, 8 Com. Cas. 133. 16
Tampico, The, 151 Fed. 689, C. C. A..... 64
Tamplin v. Anglo Mexican Co., L. R. 1916, A. C. 397, 21 Com. Cas. 299..... 14
Tangier, The, 32 Fed. 230..... 31
Tarbell v. Royal Exchge. Spg. Co., 110 N. Y. 170..... 61
Taylor v. Fall River Iron Works, 124 Fed. 826..... 26
Tenedos, The, 137 Fed. 443, affd. 151 Fed. 1022..... 66
Ten Thousand and Eighty-two Oak Ties, 87 Fed. 935..... 53
Thacher v. Boston Gas. Co., 2 Lowell, 361, F. C. No. 13,850. 50
Thalman v. Texas Star Mill Co., 4 Com. Cas. 265, 5 Com. Cas. 321..... 21
Thebideau v. Cairns, 171 Fed. 233.....23, 85
Themis, The, 244 Fed. 545..... 47
Thomas v. Portsea S. S. Co., L. R. (1912), A. C. 1, 12 Asp. M. C. 23..... 26
Thomas P. Sheldon, The, 113 Fed. 779..... 82
Thorman v. Dowgate S. S. Co., L. R. (1910), 1 K. B. 410, 11 Asp. M. C. 481, 15 Com. Cas. 67..... 48
Three Hundred and Ninety-three Tons Guano, 6 Ben. 533, F. C. No. 14,011..... 42

[References are to Sections.]

SECTION

Tillmans v. Knutsford, L. R. (1908), 1 K. B. 185, 11 Asp. M. C. 105. 10
Timor, The, 67 Fed. 356. 73
Titania, The, 131 Fed. 229, C. C. A. 26, 61
Titania, The, 19 Fed. 101. 75
Torgorm, The, 48 Fed. 584. 25
Tornado, The, 108 U. S. 342, 27 L. Ed. 747. 30
Toronto, The, 174 Fed. 632, C. C. A. 47, 59, 64
Towle v. Kettel, 5 Cush. (Mass.) 18. 50
Trechman v. Munson, 203 Fed. 692, C. C. A. 2
Trott v. Wood, 1 Gall. 443, F. C. No. 14,190. . . . . 30, 69
Turner v. Haji Goolam, L. R. 1904, A. C. 826, 9 Asp. M. C. 588. . . . . 16, 25
Tweedie v. Barry, 205 Fed. 721, C. C. A. 35
Tweedie Tra. Co. v. Clan Line, 207 Fed. 70, C. C. A. 5
Tweedie Trading Co. v. Craig, 159 App. Div. 192. 25
Tweedie v. N. Y. & Boston Dyewood Co., 127 Fed. 278, C. C. A. 24
Tweedie v. N. Y. Cent., 194 Fed. 281. 53
Tweedie v. Pitch Pine Lumber Co., 156 Fed. 88. . 37, 38, 40, 54
Tweedie Trading Co. v. The Sangstad, 180 Fed. 691, C. C. A. 2
Tweedie v. Strong, 195 Fed. 929, C. C. A. 49, 54
Tweedie v. Thomsen, 173 Fed. 710. 54
Twilight, The, 194 Fed. 926. 57
Two Hundred and Sixty-eight Hogsheads of Molasses, 1 Hask. 24, F. C. No. 14,296. 81
Two Thousand Tons of Coal ex Michigan, 135 Fed. 734, C. C. A. 42, 43
Tyne Co. v. Leach, L. R. (1900), 2 Q. B. 12, 5 Com. Cas. 155. 39

U

Ulster Brick Co. v. Murtha, 169 App. Div. 151. 49
Unione Austriaca v. Tujague, 231 Fed. 427, C. C. A. 72
Unionist, The, 48 Fed. 315. 38

[References are to Sections.]

SECTION

United S. S. Co. v. Haskins, 181 Fed. 962, C. C. A..... 83
Uren v. Hagar, 95 Fed. 493.....40, 53
U. S. v. N. Y. & O. S. S. Co., 216 Fed. 61, C. C. A..... 67
U. S. Shipping Co. v. U. S., 146 Fed. 914..... 54

V

Vaderland, The, 18 Fed. 733..... 73
Vanderbilt v. Ocean S. S. Co., 215 Fed. 886, C. C. A..... 60
Vane v. Wood, 231 Fed. 353..... 26
Vellore S. S. Co. v. Steengrafe, 229 Fed. 394, C. C. A..... 34
Velona, The, 3 Ware, 139, F. C. No. 16,912..... 30
Venus Shipping Co. v. Wilson, 152 Fed. 170, C. C. A..... 85
Viola, The, 90 Fed. 750..... 52
Vogemann v. Raeburn, 180 Fed. 97, C. C. A..... 85
Vogemann v. Zanzibar S. S. Co., 6 Com. Cas. 253, 7 Com. Cas. 254. 13
Volund, The, 181 Fed. 643, C. C. A.....:..... 7

W

Walford v. Affreteurs Reunis, 23 Com. Cas. 461, affd. 24 Com. Cas. 268..... 34
Walker v. Western Trans. Co., 3 Wall. 150, 18 L. Ed. 172. 71
Wallace v. Cargo of Lumber, 224 Fed. 993..... 40
Warren Adams, The, 74 Fed. 413, C. C. A..... 70
Wash. Co. v. Rainier Mill Co., 198 Fed. 142.....38, 42, 49
Wasson v. Stetson, 214 Fed. 329.....37, 52
Watson S. S. Co. v. Merryweather, 12 Asp. M. C. 353..... 2
Watts v. Camors, 115 U. S. 353, 29 L. Ed. 406.....1, 33
Wehner v. Dene S. S. Co., L. R. (1905), 2 K. B. 92, 10 Com. Cas. 139. . . ..10, 16, 19
Weir v. Northwestern Comm. Co., 134 Fed. 991..... 40
Weir v. Union S. S. Co., L. R. (1900), A. C. 525, 5 Com. Cas. 363, 9 Asp. M. C. 111.....4, 7
Wellman v. Morse, 76 Fed. at 577, C. C. A..... 80

[References are to Sections.]

SECTION

Wells City, The, 61 Fed. 857..... 69
Wencke v. Vaughn, 60 Fed. 448, C. C. A..... 22
West Hart. Nav. Co. v. Kainit, 164 Fed. 836, C. C. A..... 43
West Hart. Nav. Co. v. Kainit, 151 Fed. 886..... 26
West Hartlepool Nav. Co. v. Vogemann, 134 Fed. 1008.... 32
West India S. S. Co. v. Field Line, 196 Fed. 591..... 57
Westminster, The, 127 Fed. 680, C. C. A..... 77
White v. Winchester S. S. Co., 23 Scottish, L. R. 342..... 38
Whitlieburn, The, 89 Fed. 526..... 66
Whitman v. Vanderbilt, 75 Fed. 422.....42, 60
Wildenfels, The, 161 Fed. 864, C. C. A..... 59
Wilhelmsen v. Tweedie, 149 Fed. 928..... 17
William Crane, The, 50 Fed. 444..... 81
William J. Quillan, The, 180 Fed. 681, C. C. A..... 79
Williams v. Naamlooze, 21 Com. Cas. 253..... 48
Williams v. Theobald, 15 Fed. 465.....35, 36, 39
Witzler v. Collins, 70 Me. 290..... 60
W. K. Niver Coal Co. v. Cheronea S. S. Co., 142 Fed. 402, C. C. A. 37, 48
Wood v. Hubbard, 62 Fed. 753..... 30
Worrall v. Davis Coal Co., 113 Fed. 549, affd. 122 Fed. 436. . . ..4, 18
Wright v. Grace, 203 Fed. 360..... 66
Wulfsberg v. Weardale, 85 L. J. K. B. 1717, 13 Asp. M. C. 296. 8

Z

Zealandia, The, 48 Fed. 697..... 70
Zulia, The, 235 Fed. 433.....70, 79

INDEX

INDEX

[References are to Sections.]

A

SECTION

Abandonment of ship, effect on freight..... 30
About. 2
Advance freight. 29
All other conditions and exceptions as per charter..... 26
Any other accidents or causes beyond control..... 48
Apparent good order and condition..... 60
Arbitration clause. 15
"Arrived ship" (so as to commence lay-days).....35, 37
As fast as steamer can deliver..... 53
Ashphalt, lawful cargo. 4
"As presented". . . . . note 25
Average, general. 78

B

Bad weather. 48
Ballast, does not prevent ship being ready to load..... 22
expense of in time charter on owner..... 4
Benefit of insurance. 75
Berth "as ordered". 35, 37
Bill of lading, form of.....Appendix G
Federal Act .....Appendix B
as the contract of carriage..... 59
and prior agreements. 59
as a receipt. 60
Bills of lading and charter-party.....25 to 27
as contract of owner or charterer..... 10
duty to give under Harter Act..... 62
signing "as presented". . . . . note 25

[References are to Sections.]

SECTION

Bona fide purchaser, of bill of lading.....25, 60
Breakage. 73
Breakdown clause. 13

C

Cancellation, effect on demurrage..... 49
Cancelling date. 22
when none in charter..... 23
Care or custody of the cargo..... 68
Certificate of seaworthiness, not conclusive..... 65
Cesser clause. 27
of hire clause (in time charters)..... 13
Charter, time. . . . . Appendix C
party, coal. . . . . Appendix F
Welsh form . . . . . Appendix E
net grain. . . . . Appendix D
Class. 1
Clearance, obligation to procure..... 42
Coal, expense of galley coal in time charter falls on charterer. 7
charterer pays for though ship off hire..... 13
lack of, causing unseaworthiness.....3, 66
Collect freight. 28
Collision, Harter Act does not excuse liability for damage to another vessel. 63
Commencement of carrier's liability..... 61
Commissions. 34
Common carrier's liability. 59
carrier, one who offers to carry goods for the public. . . . . note 59
Conclusive evidence clause. 60
not incorporated in bill of lading..... 26
Conditions precedent. 1, 21
Constructive knowledge of charter..... 25

[References are to Sections.]

SECTION

Continuously. 54
Contraband as lawful cargo. 4
see Restraint of princes.
Customary dispatch. 52
Custom house officers, delay by inattention of, for charterer's account. 42

D

Damage to cargo, may be set-off against freight. 28, 31
vessel, in time charters. 18
capable of being covered by insurance. 75
Damages, measure of, see Measure of damages.
special, see Special damages.
Dangerous cargo. 79
"Days". 40
Dead-freight. 32
weight. 1
Deck cargo, rights and liabilities as to. 81, 25
what is. 81
right to load. 9
Default. 50
Deficiency of men—in time charters. 13
Delay, damages for. 84
Delivery by carrier. 61
to carrier. 61
Demise, time charter is not. 47
Demurrage rate. 49
Deviation. 69
Dispatch money. 57
Docking, in time charters. 17
Dry-docking, see Docking.
Due diligence. 65
Duty of injured party to mitigate damages. 82

[References are to Sections.]

E

SECTION

Effect of expiration of lay-days..... 49
"Efficient state to resume her service"..... 13
Efforts to be made to overcome operation of an excepted cause. 47
Eiusdem generis rule. 48
Error in management or navigation..... 67
Exception clauses and demurrage.....44 to 48
whether or not they protect the charterer..... 45
how far is prevention necessary?..... 47
Exception clause in time charters..... 14
Expiration of lay-days, effect of..... 49
Explosion, not a peril of the seas..... 70

F

Fault of master or owner delaying loading or discharging 42
Fault or error in management or navigation..... 67
Federal Bill of Lading Act.....Appendix B 61
Fire. 71
Fire statute, limiting shipowner's liability..... 71
and general average. 78
Fixed time for loading or discharging..... 39
Freight as per charter.....26, 27
and all other conditions as per charter..... 26
advance. 29
dead. 32
lump sum. 31
pro rata. 30
when earned. 28, 30
forfeited by abandonment of ship..... 30
Frost. 48
Frustration of the venture.....14, 23

[References are to Sections.]

SECTION

Forms:
Bill of lading. . . . . Appendix G
Coal charter party. . . . . Appendix F
Coal charter party, Welsh form. . . . . Appendix E
Net grain charter. . . . . Appendix D
Time charter. . . . . Appendix C

G

General average. 78
Governmental interference, see Restraint of princes.
Gross register. 1
"Guaranteed". 1

H

Half holidays. 40
Harter Act, treated. . . . . 62 to 68
reproduced. . . . . Appendix A
when applicable. 63
what is forbidden by. 64
seaworthiness and unseaworthiness. 65, 66
management and navigation. 67
care of the cargo. 68
Heat. 73
Hire, non-payment under time charter allows withdrawal. . 8
Holidays. 40

I

Incorporation of charter in bill of lading. 26
Indemnification of owners when bills of lading signed by charterers. 11
Insurance clauses in bills of lading. 75
in time charters. 6
and general average. 78
Intervention of constituted authorities. 48

[References are to Sections.]

SECTION

Invoice value clause..... 76
Iron ore, is lawful cargo..... 4

J

Jason clause. 78

K

Knowledge of charter, effect on bill of lading holder..... 25

L

Lawful cargo. 4, 18
Lay-days. 39
when they begin.....35, 37
Leakage. 73
Liberty to call or tow, etc..... 69
Liens. 80
Lien, demurrage during exercise of..... 58
on cargo and sub-freights in time charters..... 16
Lighterage at the expense of the cargo..... 24
Limitation of liability statutes..... 71
Loading and discharging, when time not fixed..... 51
Loading, ship under time charter..... 9
Lump sum freight. 31

M

Management and navigation. 67
Master's discretion (as to safe ports)..... 5
Master, signing bills of lading under time charter..... 10
Measure of damages, in general.....82 to 85
for breach of charter..... 85
for delay. 84
for loss or damage to goods..... 83
duty to mitigate, see Mitigation.
recovery of special damages, see Special damages.

Measure of damages—Continued SECTION
for breach of warranty of speed..... 1
penalty clause does not affect..... 33
for refusal to arbitrate too indefinite for recovery.... 15
Misrepresentations as to vessel.....1, 21
Mitigation of damages, duty of..... 82
Mutually excepted. 14, 57

N

Navigation, in time charter, duty of owner..... 7
errors in. 67
Negligence clauses. 62
Net register. 1
"Not guaranteed". 1
Notice of claim. 77
Notice of readiness. 38
"Now sailed or about to sail"..... 21
Number of packages received..... 60

O

Obligation on charterer to have cargo ready..... 56
Option to cancel. 22
Oral agreements. 1
Other conditions as per charter..... 26
Overlap in time charter..... 2

P

Parole evidence rule. 1
Penalty clause. 33
Perils of the sea..... 70
Personal contracts and limitation of liability..... 71
Personal injuries, not within Harter Act..... 63
Pilferage. 74
Pirates, loss by, a peril of the sea..... 70
Pomerene Act, see Federal Bill of Lading Act.

[References are to Sections.]

SECTION

Position of ship at time of making charter..... 21
Prepaid freight to be considered earned on shipment..... 29
Proceeding to loading port..... 21
Pro rata freight..... 30
Private carrier, distinguished from common carrier....note 59
Privity..... 71
Proceed with all possible dispatch..... 21
Produce Exchange rules..... 52
Pumps, failure to use, an error in management or navigation 67

Q

Quarantine, is restraint of princes..... 13
ship in, not ready..... 38
Quick despatch..... 53

R

"Rainy days"..... 40
Rats, see Vermin.
Readiness of cargo, obligation of charterer as to..... 56
Readiness, notice of, see Notice of readiness.
Ready for cargo or to load..... 22
Reasonable time, for loading or unloading..... 52
Representations as to vessel.....1, 21
Requisition, effect of, on time charter..... 14
Restraints of princes.....14, 72
Robbery..... 74
Running days..... 40
Rust..... 73

S

Safe ports.....5, 24
Safely..... 24
Saturdays as half-holidays..... 40
Sea-water damage..... 70

[References are to Sections.]

SECTION

Seaworthiness and the Harter Act.....65, 66
in time charters..... 3
Ship, statements as to.....1, 21
Ship lost or not lost..... 29
Shipper's load and count..... 60
Shortages..... 60
So near as she may safely get.....24, 36
Spaces at charterer's disposal..... 9
Special damages.....82, 83, 85
Speed..... 1
Statements as to the vessel's cubic capacity..... 1
dead-weight..... 1
position..... 21
readiness..... 21
registered tonnage..... 1
time of sailing..... 21
Stevedores, delay of in loading or unloading chartered ship. 43
Stiffening, delay due to taking in does not extend lay-days. 42
Strikes.....47, 48
Sub-charter..... 20
Sundays as holidays..... 40
Sundays and cancelling date..... 22
Supplymen, lien on ship under time charter..... 7
Sweat..... 73

T

Tender of vessel as ready to load..... 22
Termination of carrier's liability..... 61
Theft..... 74
Time and voyage (under time charters)..... 2
(under time charters) "about"..... 2
Time charter, break-down clause..... 13
cesser of hire clause..... 13
arbitration clause..... 15

[References are to Sections.]

	Section
Time charter—Continued	
damage to vessel	18
dry-docking under	17
exception clause in	14
expenses falling on owner; insurance	6
charterer	7
indemnification by charterers	11
lien on cargoes and sub-freights	16
lawful cargo	4
seaworthiness in	3
safe ports	5
signing bills of lading under	10
spaces at charterer's disposal	9
statements relating to the ship	1, 21
sub-charters	20
time and voyage	2
winches and winchmen	19
withdrawal	8
Tow, see Tug.	
Transshipment	30
as deviation	69
Tug, Harter Act does not excuse liability for injury to tow	63
Turn berth clauses	55

U

Underlap, in time charter	2
Unsafe ports	5, 24
Unseaworthiness, see Seaworthiness.	

V

Valuation clauses	76
Ventilation of the cargo	12
Vermin	73
a loss by, not a peril of the sea	70
Vis major	50

[References are to Sections.]

W	Section
War, see restraint of princes	72
Warranties	1, 21
Warranty of seaworthiness, see Seaworthiness.	
Weather working days	40
Weights, damage to ship in loading excessive	18
Wetting, as exception in bill of lading	73
Whether in berth or not	37
Winches and winchmen	19
Withdrawal, under time charter	8
With all possible despatch	21
With all convenient speed	21
Working days	40
Working on excepted days	41